87-891

NO:

Supreme Court, U.S.
FILED
OCT 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

JOHN FRIEDRICH

Petitioner,

VS.

THE STATE OF OHIO

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF OHIO, HOLMES COUNTY

COUNSEL FOR PETITIONER:
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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION PRESENTED FOR REVIEW

IS A CRIMINAL DEFENDANT'S PRE-TRIAL MOTION TO DISQUALIFY THE PROSECUTOR IN A MURDER CASE SUBJECT TO IMMEDIATE APPEAL WHERE THE ACCUSED SHOWS:

1. AN ATTORNEY/CLIENT RELATIONSHIP WITH THE PROSECUTOR.
2. AN ABUSE OF THIS RELATIONSHIP TO OBTAIN A SECRETLY RECORDED, 32 PAGE STATEMENT WHICH IS THEN USED TO INDICT THE DEFENDANT.
3. NEWS PUBLICATION OF THIS PRIVATE, PREJUDICIAL MATTER.
4. SUGGESTIONS MADE BY THE APPELLATE COURT THAT THE PROSECUTOR RESIGN FROM THE CASE COMMENTING, "WHY WOULD YOU EMBARK UPON FEDERAL WATERS WITH A LOOSELY MOUNTED CANNON ON YOUR DECK."

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JURISDICTION

JOHN FRIEDRICH, the above named Petitioner/Defendant hereby appeals to The SUPREME COURT OF THE UNITED STATES from the Entry Order of the OHIO SUPREME COURT overruling the leave to appeal from the 5th DISTRICT COURT of APPEALS entered in this action, the 5th of August, 1987 (appendix 2, infra).

This appeal is taken pursuant to 28 U.S.C. Sec. 1257 and Sec. 2104.

STATEMENT of the CASE

This is an aggravated murder case that involves Disqualification by Motion, the Prosecuting Attorney prior to trial because of not only his prior attorney/client relationship with Defendant/Petitioner herein; but, also due to his dual role as Holmes County Prosecutor and general counsel for Defendant/Petitioner herein during critical stages of the pre-indictment proceedings and interviews. The Prosecutor mentioned herein has maintained that the alleged conflict of interest is nonexistant. The written motions and exhibits, together with the argument, chronologically demonstrate that in August of 1984, Petitioner/Defendant consulted with Attorney/Prosecutor Thomas D. White regarding a Worker's Compensation Claim. In October of that same year, Petitioner/Defendant again consulted with Attorney/Prosecutor White in regards to the reactivation of his Worker's Compensation claim.

On March 29, 1986, a homicide occured in Killbuck, Ohio. The victim was discovered by Petitioner/Defendant herein.

On April 3, 1987, Petitioner/Defendant made an office appointment with Attorney/ Prosecutor White for the following day to discuss matters regarding articles seized from him by the Holmes County Sheriff's Department. Unknown to Petitioner/ Defendant Attorney/Prosecutor White secretly recorded a 34 page "conversation' which resulted in Petitioner/Defendant's murder indictment (Appendix 8). MIRANDA warnings were not discussed until page 28 of the recorded transcript.

On August 6, 1986, Petitioner/Defendant moved to disqualify Prosecutor Thomas D. White on the basis that Petitioner/ Defendant and Mr. White had a prior Attorney/Client relationship. The Motion was argued orally on September 23, 1986. The State argued that in a small county the Prosecuting Attorney has to wear several hats

and this unavoidably exposes him to potential conflicts (t.p. 6, lines 15-23). The Petitioner/Defendant argued that a subjective and objective test could be used to analyze as to whether or not a conflict indeed existed (t.p. 7, lines 18-23). Even though the State quotes Petitioner/Defendant (t.p. 9, lines 20-22) as stating Thomas D. White is his Attorney, the State maintains it is clear from Petitioner/Defendant's understanding that Mr. White was not representing him in regard to the murder of GAYLE MEGGYSEY (t.p. 9, lines 22-24 & t.p. 10, lines 3-5). The State concluded initially (t.p. 10, lines 22-23) that on the basis of the conversational excerpts, Petitioner/Defendant did not pass the subjective test. The State also claimed that because of the presence of a third party, a Sheriff's Deputy, the Petitioner/ Defendant also failed the objective test (t.p. 11, lines 1-12). The Court overruled Petitioner/Defendant's Motion stating through

its October 24, 1986 opinion that there was indeed an Attorney/Client relationship, but it was stale as there was no contact between Attorney and Client for approximately eighteen months (Appendix 6). The Court stated that as it appeared that Petitioner/Defendant was not seeking advice of Thomas D. White on April 4, 1986 as private counsel, and as a third person was present, this resolved the matter; therefore, no conflict existed and Mr. White should continue as counsel for the State.

Notice of Appeal from this decision was filed November 7, 1986 (Appendix 5). The FIFTH DISTRICT COURT OF APPEALS dismissed the Appeal April 17, 1987 "for want of juristiction as there is no final appealable order"; journalized May 1, 1987 (Appendix 4). Notice of Appeal to THE OHIO SUPREME COURT was then filed on the 29th of April, 1987; but, overruled by that Court August 5, 1987 (Appendix 2).

In view of this Court's 1985 RICHARDSON-MERRELL INC. v KOLLER; 105 S.Ct. 2757

decision with respect to an Attorney's role as witness/advocate in Civil matters and the absence of any comparative Criminal Case Law, an Appeal to this Court was timely filed on August 5, 1987 (Appendix 1).

REASONS TO GRANT THE WRIT OF CERTIORARI

The instant case is an extraordinary occurrance in current criminal law practice. There is no dispute that prior to his indictment, Petitioner/Defendant JOHN FRIEDRICH and Holmes County Prosecutor THOMAS D. WHITE had an attorney/client relationship that began in August of 1984 for the purpose of filing an original Worker's Compensation Claim and its reactivation in October of that same year (Appendix 7).

There is also no dispute that on April 4, 1986, the Petitioner/Defendant did keep an appointment with his Attorney for the purpose of discussing articles seized from him by the Holmes County Sheriff's Department in their investigation surrounding the death of GAYLE MEGGYSEY. Petitioner/Defendant was not aware nor made aware of the fact that his Attorney, Thomas D. White was also acting as an investigator for the Sheriff's Department in that Mr. White questioned, secretly recorded

and then used the information obtained from the recording to obtain an Indictment for Murder against his own client.

It is submitted that Thomas D. White, in a dual capacity as the Attorney for the State and also Sheriff's investigator, was conducting and participating in an action extremely adverse to his former client. It must be noted that the Petitioner/Defendant <u>believed</u> that Mr. White was his Attorney. This dual relationship constitutes a major conflict and an impropriety. A review of the recorded conversation transcript (Appendix 8, pages 1-6) indicates, at best, that this relationship did not have clear boundries and that there was a reliance by the Petitioner/ Defendant on their present and prior relationship. If that relationship was indeed terminated, then it was Mr. White's duty and responsibility to inform Petitioner/Defendant in clear language that the Attorney/Client relationship had

ended and when; in addition, he should have also advised Petitioner/Defendant of his MIRANDA Rights. This was not done until near the end of the "recorded conversation" (Appendix, page 28).

On the basis that there was a viable Attorney/Client relationship, 6 O.JUR 3rd, Attorneys at Law, Sec. 120, Preserving Confidences and Secrets of Client, states:

"An attorney may not divulge to others confidential communications, information and secrets imparted to him by the client or aquired during their professional relationship unless authorized to do so by the client himself. He must not knowingly reveal a confidence or secret of his client, or use the same for the advantage of himself or of a third person unless the client consents after full disclosure. However, he may reveal confidences or secrets with consent of the client after full disclosure or when permitted under the Disciplinary Rules or required by Law or Court Order...."

Assuming that there was a genuine termination of this relationship, that action does not relieve an Attorney of his obligations. 6 O.Jur. 3rd, Attorneys at Law, Sec. 119, Conflicts of Interests reads as follows:

"An attorney must be impeccably loyal to his trust, to the exclusion of the affairs of others that may create a conflict of

interests, and if the attorney suspects a conflict, he should completely withdraw or fully advise all parties concerned. He is precluded from accepting employment that will adversely affect his judgement on behalf of his client or will dilute his loyalty to him, and should decline proffered employment if the exercise of his independent professional judgement in behalf of a client will be or is likely to be adversely affected by the acceptance of such employment."

Considering State v. Cooper 409 NE2d 1070, (1980), where an attorney appointed by the Court to represent an indigent Defendant in a felony case resigned as counsel to accept an appointment as an Assistant Prosecuting Attorney, neither he nor his assistant, aides and staff were permitted to act as Prosecutors in the case because of the appearance of impropriety; it was not necessary that the Defendant show that he had been prejudiced in such a situation. The instant case is more vivid than State v. Cooper in that disqualification according to Cooper "is necessary because of the overriding requirement that the public must be able to maintain the right to believe in the total integrity of the Bar as a whole." In

other words, assuming that no impropriety exists, the States Attorney was so initially involved that he should have resisted the temptation to further involve himself in the case.

It is readily apparent that had it not been for his prior relationship with Mr. White, Petitioner/Defendant, would not have visited Mr. White's office; nor would he have engaged in a lengthy conversation that was secretly recorded and converted through manipulation and innuendo into quasi admissions of involvement in a heinous crime.

The State's Attorney, in this instance, used his prior position of trust and the client's presumption of prior loyalty and sincerety to investigate for the police and to deliberately deceive and mislead this Petitioner/Defendant into making responses that can be made to appear sufficiently incriminating about which Thomas D. White could testify, directly or through the use of an agent, at the Grand Jury Hearings.

Thomas D. White Esq. directly obtained the

statements from Petitioner/Defendant and in his capacity as the State's Attorney had to recount his conversation with the Petitioner/Defendant and/or cite his conclusions to the Grand Jury. Because of his witness/advocate role confusion, Mr. White's interests at the Grand Jury Hearing resulted in the justification of his own investigation and interrogation of the accused and not in the prevention of unfounded accusations toward an innocent citizen. It also appears that the State's Attorney, Thomas D. White, went from a conflict of interest to a matter of personal interest. He, in violation of **Cannon 7, DR-107(B) Code of Professional Responsibility**, took the extraordinary step and published, either intentionally or negligently, through County Court filings, the taped conversation transcript rather than having them delivered privately to Petitioner/Defendant's new counsel (Appendix 8). In addition, he also procured publication of other test results, such as ballistics, and placed the results in the public eye

through the agency of a local newspaper reporter for The Daily Record and Farmers Hub.

Canon 7, supra, as adopted by the SUPREME COURT of OHIO states in part that:

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extra-judicial statement thata reasonable person would expect to be diseminated by means of public communication and that relates to:

(1) The character, reputation or prior criminal record including arrests indictments or other charges of crime of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) "The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement."

(4) "The performance or results of any examination or tests or the refusal or failure of the accused to submit to examinations or tests."

(5) The identity, testimony or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence or merits of the case.

Also supportive of Petitioner/Defendant's

position are the American Bar Association Standards relating to Administration of Criminal Justice. Chapter 3, The Prosecution Function, Standards 3-12 states that the Prosecutor should avoid appearance or reality of a conflict of interest with regard to official duties.

The issues contained herein are such that a reasonable man or jurist can appreciate the need for clarification. Are the Constitutional guarantees afforded by the Fourth, Fifth, Sixth and Fourteenth Amendments any less applicable in a small state, community or county than in their larger counterparts. Should a States's Attorney be any less bound by Codes, Ethics and Cannons of his chosen profession because he might wear two hats instead of one. Is it proper for an attorney in light of the totality of circumstances to proceed in the herein described manner? Is a former client expected to distrust his former lawyer to the extent that he must anticipate his former lawyer is steering him towards a Grand

Jury Indictment for Aggravated Murder? The Petitioner/Defendant maintains his innocence in the death of GAYLE MEGGYSEY; however, because of the herein stated transgressions against the Petitioner/Defendant's rights whether by design or negligence, he believes and avers that the only way he will obtain a fair trial now, is by the disqualification of the State's Attorney, Thomas D. White.

CONCLUSION

A Prosecuting Attorney should be disqualified prior to trial where he had or apparently has a prior attorney/client relationship with an accused and where he additionally assumed a dual role as Attorney/Prosecutor for the accused.

Here the confusion of roles resulted in the Defendant's indictment for Aggravated Murder with a gun specification. Further, this Prosecutor, due to his participation in the procurment and secret recording of statements made by the accused, is a witness to the events that led to his client's, indictment.

The Prosecutor's past and continuing conduct and involvement deprives this Petitioner/Defendant of his Fourth, Fifth, Sixth and Fourteenth Amendment Rights. The permission of this States's Attorney to continue in his position as Prosecutor for the State is a virtual guarantee of conviction in the Trial Court. To go forward to trial with this witness/advocate

conflict unresolved will be a great disservice to the Petioner/Defendant who will undoubtedly, if convicted, be deprived of his Freedom and forced to spend a considerable portion of his life incarcerated while this issue is again argued, after the fact, perhaps even before this Honorable Court.

For the reasons stated herein, the Petioner/Defendant resectfully requests that THE UNITED STATES SUPREME COURT grant Certiorari inorder that the Law with respect to Witness/Advocate Conflicts in Criminal matters is clarified for not only the instant case; but, future matters as well.

Respectfully submitted,

Ralph C. Buss
Attorney for Petioner
State Bar No:
111 East Washington Street
Painesville, Ohio 44077
(216) 357-5577

IN THE
SUPREME COURT OF THE UNITED STATES

October term, 1987

JOHN FRIEDRICH

Petitioner,

vs.

THE STATE OF OHIO

Respondent.

On this 30th day of September, 1987, three copies of Petitioner's Petition For A Writ of Certiorari to THE SUPREME COURT OF THE UNITED STATES was sent by regular U.S. mail, postage prepaid, to Thomas D. White, Esq., P.O. Box 436, Millersburg, Ohio 44654.

Ralph C. Buss, Esquire
Attorney for Petitioner

APPENDIX

A-1. Notice of Appeal to THE SUPREME COURT OF THE UNITED STATES.

A-2. Journal Entry of THE SUPREME COURT OF OHIO.

A-3. Notice of Appeal to THE SUPREME COURT OF OHIO.

A-4. Opinion of the 5th DISTRICT APPELLATE COURT.

A-5. Judgement Entry of TRIAL COURT.

A-6. Opinion of TRIAL COURT.

A-7. Defendant's Affidavit attached to Motion for Disqualification of Counsel.

A-8. Transcript of April 4, 1986 recording.

A-9. Copy of ABA Standards, Chapter 3, Standards 3-12.

A-10. Copy of Canon 7 DR 7-107 (B).

A-11. TRIAL COURT transcript containing Motion for Disqualification of Counsel.

THE SUPREME COURT
COLUMBUS, OHIO
CASE NO. 87-835

STATE OF OHIO	)	
	)	
APPELLEE	)	
VS.	)	
	)	
JOHN FRIEDRICH	)	NOTICE OF APPEAL
	)	TO THE SUPREME
APPELLANT	)	COURT OF THE
	)	UNITED STATES

Notice is hereby given that John Friedrich, the Defendant/Appellant above named, hereby appeals to the Supreme Court of the United States from the Entry Order of the Supreme Court of Ohio overruling the leave to appeal from 5th District Court of Appeals entered in this action on August 5, 1987.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257 and Sec. 2104.

Respectfully submitted,

Ralph C. Buss
Attorney for Appellant
Washington Square
111 E. Washington St. # 1
P.O. Box 120
Painesville, Ohio 44077
(216) 951-3276 or 357-5577

THE SUPREME COURT OF OHIO
COLUMBUS

1987 TERM

To wit: August 5, 1987

State of Ohio Appellee,	:	Case No. 87-835
v.	:	E N T R Y
John Friedrich Appellant,	:	

Upon consideration of the motion for leave to appeal from the Court of Appeals for Holmes County, it is ordered by the Court that said motion is overruled.

COSTS:

Motion Fee, $20.00, paid by Ralph C. Buss.

THOMAS J. MOYER
Chief Justice

I, Marcia J. Mengel, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal of this Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this date _____.

MARCIA J. MENGEL CLERK

_____ DEPUTY

COURT OF APPEALS OF OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	)	COURT OF APPEALS
	)	CASE NO. CA-369
PLAINTIFF/APPELLEE	)	
	)	
vs.	)	NOTICE OF APPEAL
	)	
JOHN FRIEDRICH	)	
	)	
DEFENDANT/APPELLANT	)	
	)	

The Defendant/Appellant hereby gives notice of appeal to the Supreme Court of Ohio from a Judgment of Dismissal of his Appeal entered by the court of Appeals of Holmes County, Fifth Appellate District, Ohio, on the 17th day of April, 1987, and Journalized on the 1st day of May, 1987.

This appeal involves a motion to disqualify the State's prosecuting attorney because of a prior attorney-client realtionship between the Defendant/Appeallant and the prosecutor. This is a substantial constitutional question.

The Supreme Court has exclusive jurisdiction to remove counsel.

Also, this appeal is one of a felony case and condition upon leave to appeal being granted by the Supreme Court.

Ralph C. Buss
Washington Square
111 E. Washington St., #1
P.O. Box 120
Painesville, Ohio 44077
(216) 951-3276 or 357-5577
Attorney for Appellant

CERTIFICATE OF SERVICE

On this the 29 day of April, 1987, copy of the foregoing Notice of Appeal was sent by regular U.S. postal service to: Thomas D. White, Esq., P.O. Box 436, 103 North Clay Street, Millersburg, Ohio 44654.

Ralph C. Buss
Washington Square
111 E. Washington St., #1
P.O. Box 120
Painesville, Ohio 44077
(216) 951-3276 or 357-5577
Attorney for Appellant

HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Norman J. Putman, P.J.
PLAINTIFF/APPELLEE	:	John R. Milligan, J.
	:	Earle E. Wise, J.
vs.	:	
	:	Case No. CA-369
JOHN FRIEDRICH	:	
	:	O P I N I O N
DEFENDANT/APPELLANT:		

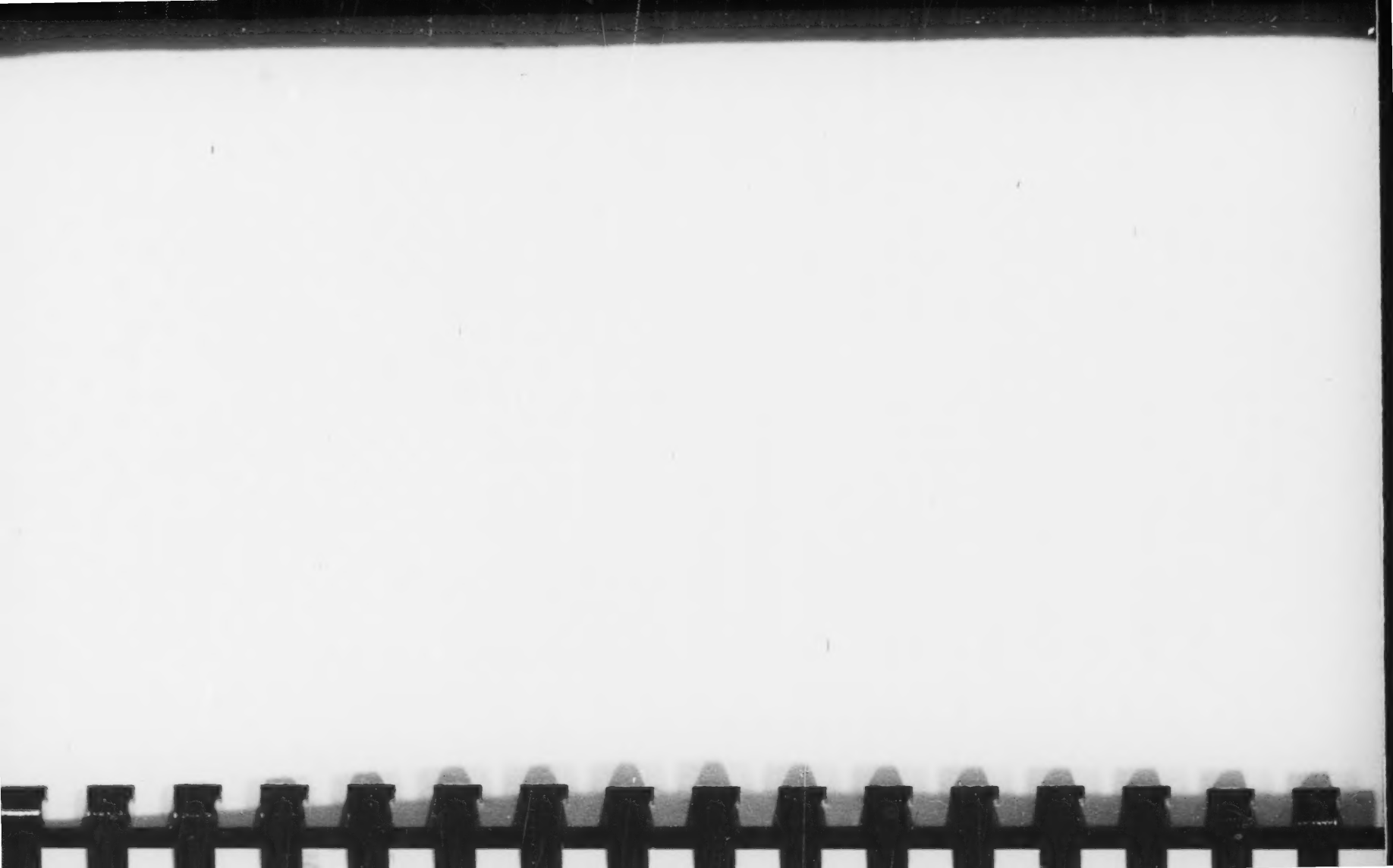
CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court Case No. 86-CR-12

JUDGMENT: Appeal dismissed.

DATE OF JUDGMENT ENTRY:

APPEARANCES:

Plaintiff/Appellee	Defendant/Appellant
JANE IRVING	RALPH C. BUSS
Assistant Prosecuting Attorney	Washington Square Suite 1
103 N. Clay St.	111 E. Washington St.
P.O. Box 436	P.O. Box 120
Millersburg, Ohio 44654	Painesville, Ohio 44077



Holmes County, Case No. CA-369

MILLIGAN, J.

DISQUALIFICATION OF PROSECUTING ATTORNEY - CONFLICT OF INTEREST-FINAL APPEALABLE ORDER

Defendant/appellant, John Friedrich, was arrested and charged with the homicide of Gayle Meggysey. He subsequently moved the Holmes County Court of Common Pleas to disqualify the Holmes County Prosecuting Attorney, Thomas D. White, because Mr. White had represented appellant several years prior to the homicide on a workers' compensation matter. The court overruled the motion with an opinion dated October 24, 1986.

Appellant appeals, assigning a single error:

> THE COURT ERRED AND ABUSED ITS DISCRETION TO THE PREJUDICE OF APPELLANT/DEFENDANT WHEN IT OVERRULED THE MOTION TO DISQUALIFY THE STATE'S ATTORNEY BECAUSE OF A CONFLICT OF INTEREST.

The initial issue before this court is jurisdiction, i.e., whether the trial court's judgment overruling appellant's motion to disqualify the prosecuting attorney is a final appealable order, subject to appeal under Section 3(B)(2), Article IV of the Ohio Constitution. See, also, R.C. 2505.03.

Finality of judgment is the jurisdictional prerequisite, and can be raised sua sponte by the appellate court. Brown Shoe Co. v. U.S. (1962), 370 U.S. 294; In re Myers (March 18, 1986). Delaware App. No. 85-CA-10, unreported; Mulqueen v. Thomas Lombardi & Sons, In. (March 17, 1986), Stark App. No. CA-6724, Holmes County, Case No. 369 unreported. See, also, R.C. 2505.02 (definition of a "final order").

Appellant cites White Motor Corp. v. White Industries (1978), 60 Ohio App. 2d 82 for authority that such an order is final. The case of White Motor does stand for the proposition that an order denying the disqualification of counsel if final

and appealable. However, White Motor was overruled by Bernbaus v. Silverstein (1980), 62 Ohio St. 2d 445. The court in Bernbaus held:

> The overruling of a motion to disqualify counsel is not an order made in a special proceeding and is, therefore, not a final order as defined by R.C. 2505.02.
>
> Therefore, we dismiss the instant appeal for want of jurisdiction as there is no final appealable order.

Appeal dismissed.

Putman, P.J. and

Wise, J. concur.

JRM/la

IN THE COURT OF COMMON PLEAS
HOLMES COUNTY, OHIO

STATE OF OHIO

PLAINTIFF CASE NO. 86-CR-12 9572

vs.

JOHN FRIEDRICH

DEFENDANT

On September 23, 1986, certain Motions filed by the State and the Defense were heard before the Honorable James H. Estill, Judge of the Holmes County Court of Common Pleas. Appearing in open Court were the Defendant with his counsel and Prosecuting Attorney, Thomas D. White, appeared representing the State of Ohio.

The Court heard oral argument upon Defendant's Motion to Disqualify the Prosecuting Attorney, the parties having agreed to submit the facts of this Motion to the Court based upon their Affidavits attached to their Motions and Memorandum. The Court took the matter under advisement and on October 24, 1986, issued an Opinion finding that the Defendant's Motion to

Disqualify the Prosecuting Attorney is not well taken and the same should be overruled and dismissed. Wherefore, it is hereby Ordered that said Motion to Disqualify is overruled and dismissed.

Defendant's Motion to Compel Discovery filed June 2, 1986, was agreed by counsel to be moot and the Court so finds.

Defendant's Motions to Examine Physical Evidence in the Possession of the State filed on June 2, 1986, and August 6, 1986, are hereby continued pending further discovery between the parties.

Defendant's Motion for Disclosure of Electronic or Other Surveillance is hereby dismissed upon the representation by the Prosecuting Attorney that no such evidence exists.

Defendant's Motion to Compel Production of the Autopsy Report which Motion was filed on June 10, 1986, was agreed by the parties to be moot as a copy of said report has been provided to the Defense.

The Court dismissed Defendant's Motion to Disclose Grand Jury Proceedings filed with the Court on August 6, 1986, was dismissed upon the Proseucting Attorney's representation that no minutes of the Grand Jury Proceedings were kept as a matter of course with Holmes County Grand Juries.

Defendant's Motion for Oral Hearing on all of Defendant's Pending Motions filed on August 6, 1986, was agreed to by the parties as being satisfied by the hearing on this date.

Defendant's Motion to Furnish Exculpatory Evidence filed with the Court on August 6, 1986, was stipulated between the parties that any exculpatory evidence would be provided by the State to the Defendant pursuant to the rules of discovery.

Defendant's Motion to Disclose Identity of Witnesses Previously Withheld was agreed to by the parties to be moot and the same is so founded by the Court.

Defendant's Motion to Disclose Impeaching Information was agreed by the

parties to be covered by the criminal rules of discover and the same is so found by the Court.

The State's Motion to Compel Reciprocal Discovery from the Defendant filed with the Court on September 4, 1986, was agreed to by Defendant and Defendant is ordered to provide reciprocal discovery withing thirty (30) days from September 23, 1986.

So ordered,

_____
James H. Estill, Judge

Approved by:

_____
Thomas D. White
Prosecuting Attorney

_____
Ralph C. Buss
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
HOLMES COUNTY, OHIO

STATE OF OHIO	)	CASE NO. 86-CR-12 9572
PLAINTIFF	)	
VS.	)	
	)	O P I N I O N
JOHN FRIEDRICH	)	
	)	
DEFENDANT	)	

On August 6, 1986, the Defendant herein filed a Motion to Disqualify Thomas White, Prosecuting Attorney, from acting as counsel for the State in this cause by reason of an alleged attorney-client relationship between he and the Defendant herein. This Motion was accompanied by Memorandum, Affidavit, and Exhibits. On August 8, 1986, the State of Ohio filed an Affidavit, Memorandum and Exhibits in opposition to said Defendant's Motion for Disqualification of Counsel. This matter was heard September, 23, 1986, and submitted to the Court for determination upon the statement and arguments of counsel and the Affidavits, Memorandum and Exhibits as aforesaid. The Court has considered all the matters as aforesaid and

find that there does not exist any formal contract between the Defendant and Mr. White which would indicate an attorney-client relationship between the two. The Exhibits do show that in the year 1984 the Defendant did consult with Mr. White as private counsel concerning a Worker's Compensation claim and received professional representation and advice from Mr. White at that time and was charged a fee for this purpose. The last contact between the Defendant and Mr. White concerning this matter was in October of 1984 when Mr. White was consulted by the Defendant regarding the re-activation of the Defendant's claim. No contact was had between either Mr. White or the Defendant herein for a period of approximately a year and six months and until April 3, 1986, when the Defendant initiated a telephone conversation between himself and Mr. White as set forth in
Defendant's Exhibit attached to his Motion and in Exhibit (B) attached to the Memorandum of Mr. White. The Court refers specifically

to Lines 18 thru 23 of said Exhibit (B) wherein the conversation indicates that the Defendant realizes that Mr. White is Prosecuting Attorney and there are "some thing you cannot, I understand that" to which Mr. White responds on Line 21 "Right. For instance if you wanted me to represent you on the case, of course I couldn't do that." The Defendant in his Memorandum indicates there are statements made by the Defendant, that he being a carpenter and not a lawyer, he does not know what his rights are or anything else. Further, that he doesn't know what's going on and "I also have another matter you are basically my attorney although you can't be in this I understand." To this Mr. White replied "okay". And the Defendant responded, "Because of your position as prosecutor", to which Mr. White responded, "Right". Further, the Defendant indicated that he did not want to pose a problem to Mr. White in coming to him.

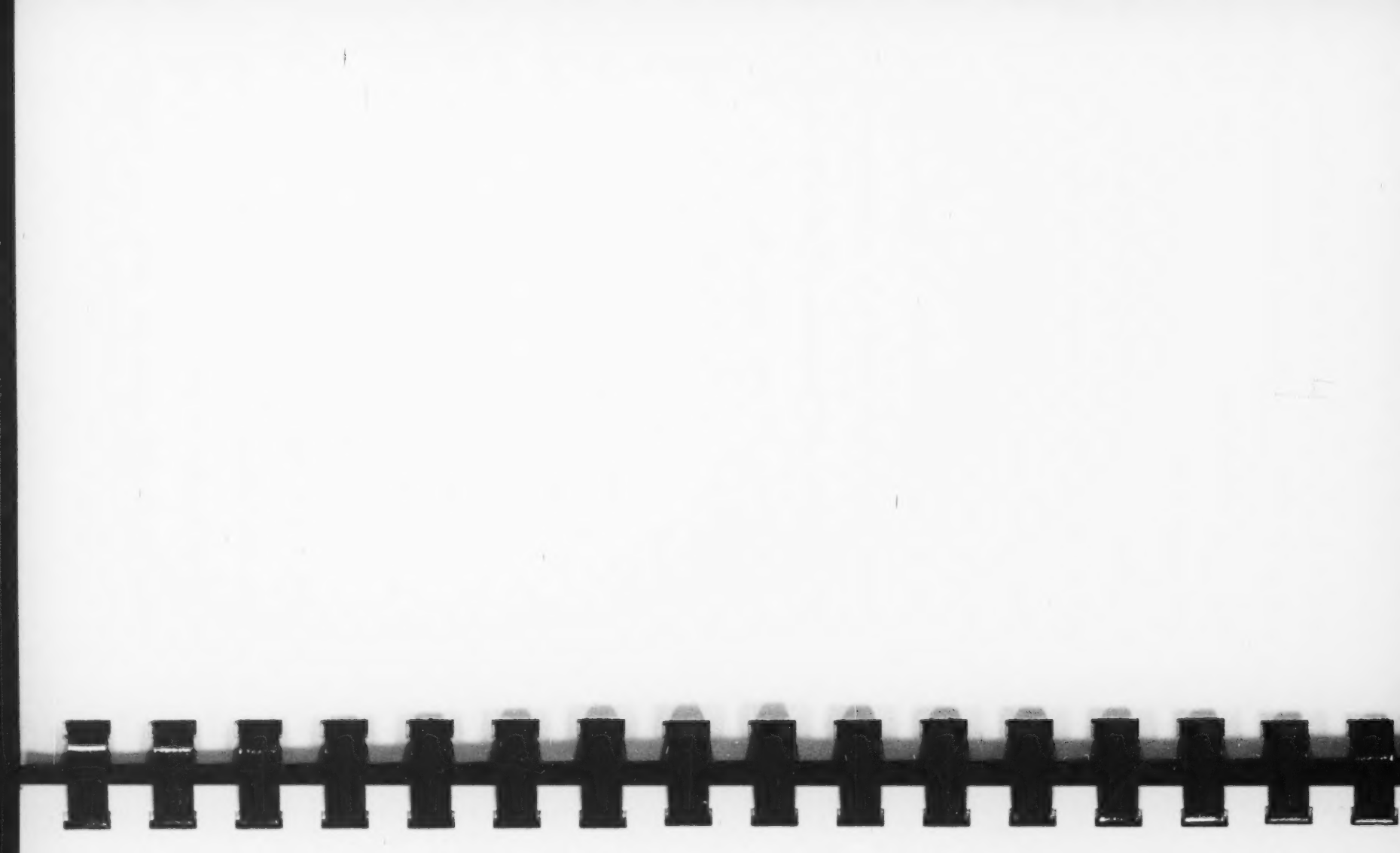
From these portions of the conversation between Mr. White and the Defendant it

appears very clear that the Defendant fully understood that in this particular matter, and irrespective of any prior relationship, the Defendant was talking to Mr. White as Prosecuting Attorney of Holmes County, Ohio, and that he fully understood that Mr. White could not represent him or advise him in the matter being discussed.

Although there be no formal contract between a client and his attorney such a contract may be implied from the conduct of the parties, (7 Am, Jur, 2d., 188, Section 118) Further, it is stated therein as follows:

> "The employment is sufficiently established when it is shown that the advise and assistance of the attorney are sought and received in matters pertinent to his profession."

Nowhere in the exhibits submitted to the Court is there any indication that the Defendant was seeking the advice of Mr. White concerning the case at hand and concerning



what position he should take as a possible defendant in this case, nor is there any indication in any of the materials that advice and assistance as private counsel was received by the Defendant from Mr. White concerning matters pertaining to this case. On the contrary, all indications are that the Defendant understood that he was conversing with Mr. White as Prosecuting Attorney of Holmes County Ohio, and, further, there could be no confidential attorney-client relationship established when the Defendant voluntarily conversed with Mr. White in the presence of Deputy Sheriff Pennell.

It is for the foregoing reasons that the Court finds that the Defendant's Motion to Disqualify Mr. White from the prosecution of this case is not well taken and the same should be overruled and dismissed. Counsel for the State shall prepare a Judgment Entry accordingly for approval of opposing counsel and execution by the Court.

JAMES H. ESTILL, JUDGE

cc: Thomas D. White, Prosecuting Atty.
Ralph C. Buss, Atty. for Deft.

STATE OF OHIO)
)SS. AFFIDAVIT
COUNTY OF HOLMES)

1. I am the Defendant herein.

2. In the month of August, 1984, I consulted with Thomas D. White as an attorney concerning a Workmans Compensation Claim as I had lost 1/3 of my left ring finger and 2/3 of my left little finger in a work related accident. He advised me and charged a fee for this service.

3. In October of 1984 I met with Thomas D. White regarding the reactivation of my claim.

4. On April 3, 1986 I made an appointment with Thomas D. White's private office to consult with him regarding articles taken from me by Captain Roger Pennell and also to ask advise as to what to do regarding this matter.

5. When I arrived at 1:00 p.m., the appointed time, Captain Pennell was already at Thomas White's office. I had not asked him to be there as I expected a private consultation.

6. My experience with attorneys was and is limited and I knew of no other attorney. I had an expectation of confidentiality, privacy and trust.

7. I was questioned for more than an hour and clearly as a result of what I was asked and the response elicited from me, I was arrested for this crime.

8. I did not intend to consult with Thomas D. White in his capacity as a prosecutor. I had gone to him for consultation as a private attorney.

9. I did not know nor did he inform me of his intentions to cause my arrest. Had he clearly informed me of what he was intending to do I would have made diligent effort to become acquainted with and to seek new counsel. Because of our prior relationship, Thomas D. White was able to manipulate questions and answers in such a manner, that it put me not only in a bad light with the citizens of Holmes County, but enabled him to cause my arrest and indictment.

Further affiant sayeth naught.

_____
John Friedrich

Sworn to before me and subscribed in my presence this the ___ day of August, 1986.

_____
Notary Public

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SUBJECT MATTER: STATEMENT WITH JOHN FRIEDRICH, CAPT. PENNELL AND TOM WHITE

Q: (Tom) Are you guys runnin it? Are you runnin now? O.K. Check with Rog and see if we're runnin. (Pennell) O.K. we're runnin. O.K. This is a header it will be April 3, 1987, approximately 1:00 in the afternoon, Office of the Prosecuting Attorney. Present in my office is Tom White, Prosecuting Attorney and Capt. Roger Pennell of the Holmes County Sheriff's Department. We have just been notified that Mr. John Friedrich has arrived. Did you get that Roger? Did you get that arch? O.K. here we go. (sigh)

Q: How you doing John?

A: Good

Q: Come on in, say I had somebody drop in uh we were talking, come on in and have a seat.

A: Thank you.

Q: Do you know this guy?

A: Uhh

Q: Hey hey buddy, how are you? You're looking good today, you got your glasses on.

A: Yes

Q: Roger was kind of telling me a little bit about the other night and I thought since you guys had had kind of a repor you would you mind him being here while were while we're talking.

A: Uh no not really, not really

Q: O.K.

A: I hope I don't say anything that'll offend him.

Q: O.K. no that's fine, well did they beat you with a rubber hose?

A: No they didn't, no they didn't.

Q: O.K. What can we do for you John?

A: O.K. Uhh hmm I guess uh o.k. right now as it stands I desperately need to go to back to work and make some money.

Q: O.K.

A: O.K. I haven't heard whether I can do this or you know that no one has said anything to me as far as what I can and

can't do.

31 Q: O.K.

32 A: O.K. In that standpoint.

33 Q: That's that's whether you work or not is up to you.

34 A: O.K. that's alright. I the situation I'm in with Denise is that I can't really afford to work for him anymore now that I have a wife and child and additional expenses that way, so ironically Saturday afternoon after I was going to stop and see Gayle I was going to come up here and talk to Gene Menuez about possibly going back to work for him, o.k. that obviously has not happened uh because of you know what I'm saying what what has transpired uh there is no problem with me doing anything like that or?

41 Q: No, as far as I'm concerned that's you know your employment is is up to you.

43 A: O.K.

44 Q: And uh if you can get in with Gene that's good.

45 A: O.K. o.k. o.k. yeah. Uh again uh I

have some property that has been taken and I have not gotten a receipt for that yet.

47 Q: O.K. (Pennell) O.K. I've got a copy of that. (Tom) We can get you a copy of that o.k.

49 A: O.K.

50 Q: That being like your gun and?

51 A: That's my gun, a pair of shoes that I wear, I mean I'm wearing my work shoes because this is the only other pair of shoes that I really have that you know I can wear and so.

55 Q: Sure, those were taken up to the laboratory? (Pennell) Yeah, I failed to give him that the other night, I I assure you that I'd give him a copy of it but as I just failed to an I apologize for that. (Tom) We can get you a copy of that no problem.

t.p.2

3 A: O.K. alright. Uh let's see uh and I I hope you don't take what I'm going to was to heart, it's not personal. The experiences that I have had with the

Coshocton County Sheriff's Department.

Q: What was that on?

A: That was a speeding violation wherein very briefly what happened I passsed a truck on a 36 there in a straightaway, I don't know if you're familiar between the run of 36 there to go to Coshocton, there are not many places to pass and what happens is they back up, well I went around about four vehicles and a truck any my speed was like 70 mph and as soon as I dropped back into the lane I just coasted back down to 55, well I was right at the intersection of 83 and 36 by then and there sat a Coshocton County Deputy Sheriff Deputy and he clocked me at 68 or 70 mph and cited me for it and uh I didn't feel that was just, o.k.?

Q: O.K.

A: Uh a couple years ago or maybe three years ago I had an incident with the Holmes County Sheriff Department that you know I I was going probably a little faster that I should have been, it was at

night and the Sheriff's Deputy that that pulled me over uh let let me back up, Nashville uh 39 and 514, I was northbound on 514 when I went through the traffic light, the Sheriff's Deputy was sitting one car, there was a car in front of him and he was sitting at the light and red in his lane so he could not, he was sitting there and I proceeded to go through as I came to the top of the hill it was green, uh I you know proceeded through Nashville and on 514 northbound and he was coming I think he was westbound on 39 o.k. uh I on top of the hill there I think it is Langs there is a long hill and then there is a double yellow line at the very top of it and I had a friend of mine with me, we were going to go to Wooster and and stop at Friendly's and get something to eat. Uh, but anyway I I came out into the passing lane when the yellow line was broken and when I came back in uh it was solid I believe although it may not have been, but the Sheriff's Deputy claimed

that I had gone around this vehicle when when it was a double yellow line and cited me and I I don't feel as though that was fair and when I uh I figured well o.k. you know I can either go to court on this as with Coshocton County or and and miss a days work and a days pay or I can pay the fine which you know it's kind of less of two evils kind of thing and I'm I'm not one to really want to go through an ordeal, you know what I mean?

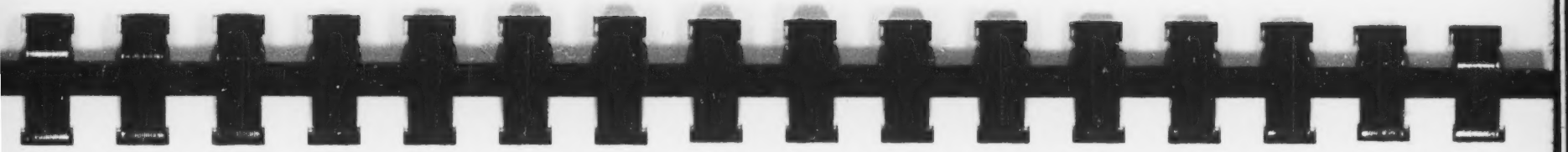
39 Q: Sure

40 A: O.K. So I figured well o.k. well it was $40.00 for that and and I guess

41 Q: Do you bare some resentment for the Sheriff's Department John?

42 A: I I guess all in all they some of them some some of the individuals are people I know and and know of and all that, but I guess I have to feel like there have been times when I have not been treated fairly and maybe it's because that was the easiest thing to do.

46 Q: O.K.



47 A: O.K. So so I guess I have kind of that in the back of my mind.

48 Q: O.K.

49 A: And and for that reason here again I have not received a receipt for these items and that uh and and I don't know you know I'm a carpenter. I I'm not a lawyer and I don't know what my rights are or anything else and and so for that reason I I guess.

53 Q: Well well let's ask, let's explore that a little bit. Tuesday night, do you have any problems with what was done, what was said?

55 A: Uh no not really

56 Q: O.K. It is my understanding that you talked to a Garver?

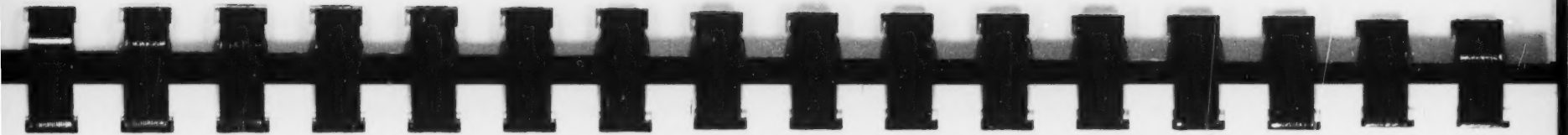
tp3

1 A: Yeah a a Paul, Paul Garver.

2 Q: Paul Garber a detective from up there.

3 A: Yeah

4 Q: It's also my understanding that you had a kind of an emotional experience



there.

A: Yes

Q: Did the the officers didn't use any force or anything?

A: No, no there you know the again you know I don't know this particular gentlement uh that you know spoke with me uh and and my the only thing my gut feelings that I have that he forced me to remember something that I did not want to and for that reason I'm you know I'm uncomfortable with (him or it?) you know.

Q: Sure sure. Are you uncomfortable with Capt. Pennell at all?

A: Not really uh

Q: I understand he was there?

A: Yes he was, I spoke with him several times. I also spoke with him Saturday evening as I spoke with you.

Q: Right

A: So you know

Q: Well you'll get a receipt for the

A: O.K.

Q: For your property and as soon as

we're done with the property it's your property John (inaudible) returned.

24 A: O.K. fine yeah o.k. there o.k. that's

25 Q: The thing you gotta realize though is that the laboratory it was taken to is up in Richfield.

27 A: Yes, o.k.

28 Q: And they handle cases from all over the (east?) corner so I can't tell you you know that we'll have it back to you tomorrow or anything like that.

30 A: Right, and and I understand that, that's that's o.k. and I understand why things are as they are and and why I'm being treated like I am, o.k.

32 Q: Well

33 A: I I understand that I I mean I can appreciate the situation that that obviously the authorities are in with this.

35 Q: We've got to you know we're dealing with a remote location.

36 A: Right

37 Q: We're dealing with an area without a

lot of neighbors.

38 A: Right

39 Q: O.K. So we've gotta work our way back

40 A: Right

41 Q: We're also working our way you may have heard that we talked that the Sheriff's Department talked to your parents I think.

43 A: Yes, I I gotta a call from my mother, she talked to my wife, when I got home my dad stopped then Wednesday morning and he was upset and you know.

46 Q: Well were they not treated well by

47 A: No, they they said that you know that that a Sheriff

48 Q: Of course you know you know the reason for checking with your parents as is thats where you said you were

50 A: Certainly, I I

51 Q: Prior to going to the Meggyesys

52 A: Again I understand why all this is happening and that I I guess I just I just see all this and I and I don't like it and

and I

54 Q: Nobody likes

55 A: I you know, right, yeah, but but here again I think well you know how necessary is all this

t.p.4

1 Q: Well

2 A: Again, you

3 Q: Let's what we're trying to do John, what the Sheriff's Department is trying to do and um is to eliminate the possibilities.

5 A: Right

6 Q: Like in everything

7 A: Right, I I understand that

8 Q: We try to eliminate things, for instance, let's say we were to go to a death scene and there is a husband dead and wife is around, well she's a natural suspect.

11 A: Right

12 Q: O.K.

13 A: Sure

14 Q: You are unfortunately the first

person to see Gayle dead.

15 A: Right

16 Q: O.K. so we've got to work back from there.

17 A: Right

18 Q: As a matter of fact, do you have any other concerns any other questions?

19 A: Yes, uh I I have a a concern, o.k. I financially uh I I don't have any insurance and I've just had a baby and you are familiar with those expenses.

21 Q: Sure

22 A: I'm sure, that child so far the total expenses just for the prenatal and delivery, caesarean and all that were $4,200.00 o.k. uh I I got married and went on my honeymoon and then did not work November because it rained o.k. all in all that's about like $7,000.00 o.k. expense and you know we financially can survive if I make $300.00 a week you know o.k. that's $1,200.00 we can we have then like 100 and a half $200.00 to play wit for you know for paying surgeon and hospital bills and

that kind of thing well not working now and and Dennis being on vacation and working partially and all that I'm at the point where I just cannot pay my bills and and so

31 Q: How can I help you with you with that?

32 A: O.K. well I'm I'm this is preliminary I'm leading up to something o.k. so what I've done is I have sold several of my guns, o.k. uh I have not wanted to leave myself defenseless o.k. in my mind if something would happen I could not get help fast enough. I must defend myself and my family, o.k. that is my own personal feelings on it and and I'm not one to leave things like that in the hands of other people that I'm not familiar with, o.k. so from that standpoint I have left myself with one handgun which which I do no longer have in my possession.

40 Q: O.K. that's the one that you gave us

41 A: That's right, o.k.

42 Q: So you would like to get that back as

soon as possible.

43 A: Yes I and I again if I had the money I would simply go buy something else to replace it.

45 Q: (Interference) Would it be possible to borrow a handgur from somebody?

46 A: There again you know I would not want to loan someone one of my guns o.k. so

47 Q: Cause something like this may happen

48 A: Right, exactly, so from that standpoint you know (inaudible) but but I guess again what I'm leading up to, this gentlemen um D.H. Troy and I don't your obviously familiar with o.k. his association.

51 Q: Woody Wilson and that

52 A: Yes, o.k. and and also the legal uh things are going on with him and Dennis at this point, o.k. now I I don't know his involvement with this or anything else and and obviously no one has said anything to me o.k. uh in my own mind and I have a pretty good imagination I admit this, but in my own mind, if that man was

responsible for what may have happened to Gayle Meggyesy he knows who I am, he knows

where I live, o.k. I am a former student of his as is _____, o.k. he has all that information o.k. and I feel as though he is detecting heat coming from my direction and that it it is feasible he can do, if he has done a similar thing to me or my family.

Q: So you would have reason to fear for your families safety?

A: Yes

Q: O.K. Let me let's talk about a couple things that you can do to minimize that o.k. No I you know you have the right to possess in your own home a firearm?

A: Right and I do.

Q: I if you don't feel about loaning or whatever we will attempt to get this back to you just as soon as we can.

A: O.K.

Q: O.K.?

A: O.K.

17 Q: Secondly, have you notified the Wooster Police Department that you may have reason to believe and ask them for extra patrol?

19 A: No, because I'm I'm not sure who I'd be dealing with and I I don't know who

20 Q: All you have to do is either you or your wife, o.k. is call in and say hey um you know I was involved as a witness in a murder case down in Holmes County, I have reason to believe you know I'm at ___, where you at?

23 A: I'm in Wooster at 1134 Townview Place

24 Q: O.K.

25 A: In said corporation

26 Q: O.K. and just say hey please could you keep an eye on my place and they'll do that they'll do it even if you're going on vacation.

28 A: O.K. o.k.

29 Q: O.K. That's a couple of things, plus you and your wife shouldn't let anybody in your home.

31 A: Right

32 Q: that you don't

33 A: And I have set up a not not to drop the subject I had an accident a traffic accident I don't know if you know that or not um like a month and a half two months ago the individual was not in control of himself and he threatened me several times o.k. and at that point uh having a little bit of experience with things like that from a a past incident I more or less set up in my house I I I had that weapon downstairs in the kitchen, I have a shotgun in the bedroom which I have I feel fairly secure as far as it the way it is uh as far as being loaded and all that uh I have you know trained myself and and told my wife hey this is something that we have to deal with and its a possibility and treat it as such.

43 Q: Just like a fire you know

44 A: That's right, you right exactly I mean you know I I would much rather be prepared for something including an attack you know and have to defend myself that to

have no you know so so from that standpoint.

47 Q: Sure, John let me let me ask you you say you got a shotgun upstairs?

48 A: Yes

49 Q: And this weapon was your downstairs weapon or?

50 A: Yes my downstairs weapon.

51 Q: Where did where would you keep it where'd you keep it?

52 A: I keep it in the kitchen uh in a in a cupboard that's that's this height.

53 Q: O.K. about shoulder level to

54 A: Yes and it's not something that a child or anybody would would come upon.

55 Q: Does your wife know where it is?

56 A: Yes, and and she is proficient with with guns and and she has knowledge of

them and how to handle 'em and and particularly the guns that I have in readiness.

3 Q: What kind of gun are we talking about, the Sheriff's Department told me

that they took one of your guns?

A: O.K. it is a Ruger stainless steel speed six .357 magnum caliber revolver in stainless steel with a 2 and 3/4 inch barrell.

Q: O.K.

A: That is the gun.

Q: And uh how long have you had it John?

A: Umm like 3 or 4 months.

Q: O.K. and its, you don't carry that weapon around with you at all do you?

A: I I I take the only time I have a gun with me uh aside from being in my house obviously.

Q: Sure, I mean out in your truck

A: I I would take something with me if I'm going if I know I'm going to be shooting it uh by myself or with my brother or something like that or if I'm going to be hunting or something like that and I always keep them in plain sight and unloaded and then I usually conceal them in the vehicle and lock it up when I leave it, but there's you know I I follow the

law that way.

20 Q: About transportation firearms

21 A: Yes

22 Q: in a motor vehicle?

23 A: Yes

24 Q: Um it may speed up I don't know it may speed up the lab work a little bit if they knew like when was the last time you fired that that Ruger?

26 A: O.K. I think I fired it the day before which was Friday I

27 Q: The day before?

28 A: The day before Saturday.

29 Q: Before you found Gayle?

30 A: Yes. I

31 Q: You fired it Friday?

32 A: Yes I fired I I cited in a rifle of mine a with a friend of mine that that I also o.k. I was citing the gun in and if you ever cited a rifle in its a very tedious process and instead of having stand around and all that I was lettin him shoot that o.k. so he and and then when after I cited the rifle in we both

fired that gun Sunday uh and I think thats the last time that guns been fired.

38 Q: Who would have been the friend that you?

39 A: That is Louis Stevens in Dublin, Ohio.

40 Q: O.K. He is isn't he from around Glenmont?

41 A: Yes he is, yeah yeah

42 Q: About your age?

43 A: Yes I went to school and that

44 Q: Yeah I think I

45 A: _____(Karen?) Stevens is his mom

46 Q: O.K. o.k. Um

47 A: So

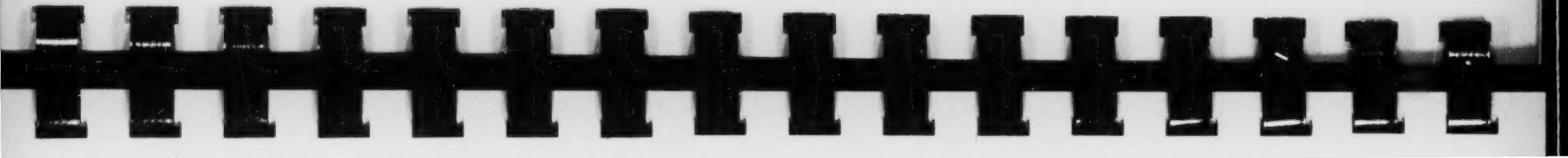
48 Q: So Friday and Sunday so it's been fired since Saturday?

49 A: Yes

50 Q: O.K. Good, was it fired at all Saturday?

51 A: I don't think it was, I didn't have it with me and

52 Q: Would it have been back at home?



53 A: Yes it was back at home in in the kitchen cabinet unless Chris fired it which if she had certainly I would have ___ discovered it by its uh by the ammunition and all that.

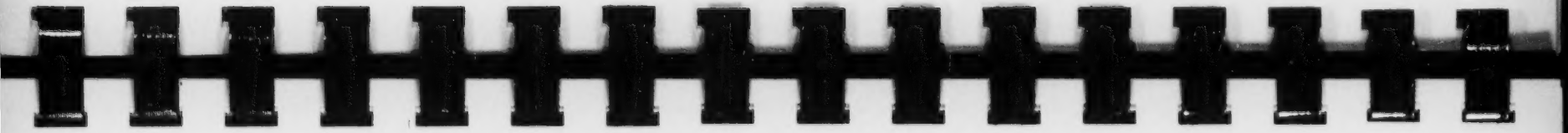
56 Q: What kind of ammunition would you have in it?

t.p.7

1 A: I had I have some Winchester .357 magnum soft point ammunition in it that's some some that my brother gave me and I've been shooting let's see I've been shootin I think Sunday I shot um some .357 magnum ammunition that my brother-in-law reloaded for me and that is uh I think a sphere 158 range jacket hollow point and previous to that uh there is some reloads that he has reloaded for me. I'm trying to think if they're (hornady?) swaged a semi-wire cutters or if they have been dd um oh what are those bullets that I bought over a Schraders?

8 Q: Ny ny clad is it?

9 A: Yes, I bought some bullets over there



some time ago and he has reloaded those for me and I'm pretty sure I have all those shot up.

Q: O.K. When would you have had all those ny how's that? (Pennell) ny ny nyclads.

A: Nyclads yeah yeah, O.K. My I they are a lead bullet that has a coating on them I don't know if it's a nylon coatng or or there a I think they're blue.

Q: Blue?

A: I'm pretty sure they are blue. O.K And anyway the relationship I have with my brother-in-law um he has reloading equipment and I do not, now what I do is I trade him either components or I pay him for the components and that and he reloads for me or I reload with him on his equipment and and he did borrow a reloading press from a cousin of his you know and that so that's how I can afford to shoot cheaper than buying factory ammunition.

Q: O.K.

A: O.K.

Q: O.K.

A: So

Q: So and you you already shot nyclads up last weekend?

A: I'm pretty sure that I have.

Q: O.K.

A: I don't I don't know if I even let's see what were we shooting Sunday

Q: You did shoot some Friday night?

A: Yeah I did shoot some Friday, but I can't remember if those were the federals or if they were some reloads either those hornady lead or those nyclads.

Q: Does Federal make nyclads or?

A: Federal?

Q: Who who makes the nyclads?

A: There my understanding is that Smith & Wesson had a problem, they used to manufacture ammunition o.k. they are no longer in the business, my understanding is that for what ever reason they stopped manufacturing ammunition I don't know if they had a legal problem or if they just

found that it wasn't profitable or whatever, they sold their essentially components, a brass and these nyclad bullets, they sold them to various people who had the right you know like like you would guns or anything right the proper prudentials I guess what I'm trying to say, an um so they Schraeders had these nyclads and and they were real reasonable they were like 2-1/2 cents a piece which is like third of the cost of like a spear or a hornady or something like that I mean they're real cheap, so you know just to shoot you know you know we bought them, Denny and I.

49 Q: Denny and you, yeah that's what I was just going to say didn't Denny have

50 A: Yes

51 Q: (Pennell) he may have had some around there.

52 A: Yes Dennis a I I discovered them my my brother-in-law took me to Schraeder's cause I never been there, and we discovered the bullets a I believe he at

that point had a 9 millimeter and I did so we bought some 355 diameter nyclad bullets I I think he bought some and I bought some a like 200 of them or something like that to try them to see you know so a the next time we were there I think I was with

Dennis and I made him aware of them and he thought yeah this is really a cheap bullet so I think he bought the remainder of them uh I think he bought the remainder which was 8 or 900 or something like that I think yeah it was 916 and they gave him the 16 they just had him pay for 900 of them I remember that, now they also

Q: Did you or your brother-in-law take any of those or did Dennis take them all?

A: Uh I let's see I think I when I went in with Dennis I may have bought another 200 and and so I think all together I bought like 4 or 600 of them o.k. and there again I wasn't doing a lot of shooting and Dennis said hey you know buy what you want and I'm going to buy the

rest so it was a kind of thing where I still had them but I didn't you know what I mean, so from that standpoint. Now they also have and haven't been there for awhile they have some .357 diameter nyclads in the hollow point which I believe I purchased some of and I believe they have those nyclads in a round nose, which is not a hollow point it's a you know like a solid bullet so

Q: So did your brother load some for you?

A: Uh it's my brother-in-law

Q: Brother-in-law yeah.

A: Yeah, I let's see well he had reloaded them uh in fact let's see we reloaded some on that press that um his cousin has it's a R_____ (can't understand the name of the press) machine and it's set up for either .357 or .38 special and the difference being that there's a spacer that you put in the dye because there's difference in the length of the case o.k.

Q: O.K.

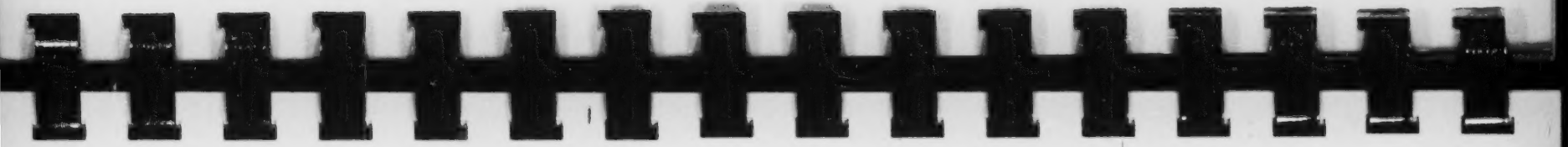
25 A: Uh I think we reloaded some then on that machine because it's real slick I mean you just pull a lever and the things automatic and you can just spin them out you know and plus we had the machine he set it up for his cousin because he's not that knowledgeable about it so that's what we did and that I know of he has shot up what he had reloaded unless he has reloaded more but there again I don't know because I'm a new father and I'm just trying to pay bills you know and stuff like this so I'm not allow you know what I mean.

33 Q: I don't want to spend the whole afternoon talking about nyclads, but you have you shot any nyclads in your .357 ruger?

35 A: Yeah yeah that's essentially the only the only

36 Q: The only thing that you have to shoot them in.

37 A: Yeah to shoot them in, I mean I my brother David has a Smith & Wesson Model



19 that um he has probably shot some in, I I have used that gun and shot them, also I reloaded some with with some of these rel that I reloaded with this press that he borrowed from his cousin I gave him some of the reloads because he likes to shoot with us and you know that kind of thing and and he's at a point position on the farm there where he doesn't have a lot spare cash so.

43 Q: O.K. I'm not a gun person, why would you put something on a bullet?

44 A: Why would you put something on a

45 Q: Like this coating, why (inaudible) nyclad, what does it do what does it not do?

47 A: Uhh I don't really know why why they have coating on there. Mike and I thought and and here again I mean you know this is this is two guys that reload we thought that the reason they put it on there would be it's the same principle as putting an alloy in with lead when you make bullets and that is so you can run them at a

higher pressure o.k. what happens when you take a pure lead bullet and you fire it from a real hot load a lot of (powder/powder) more so than would be considered normal o.k. what happens is the heat from that ignition melts some of the lead and you have what is called leading in the gun then and this is not a favorable condition because it makes it hard then to put ammunition in to it because the cylinder leads up and your

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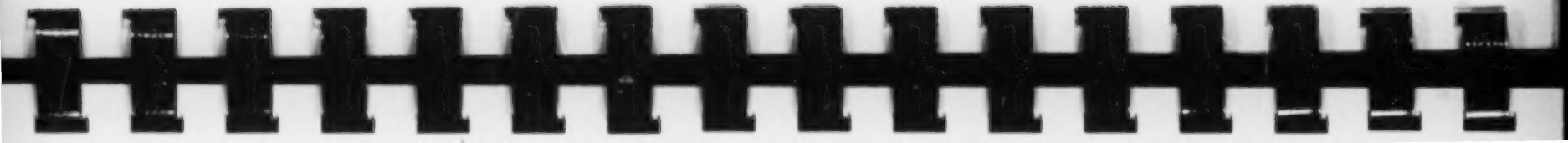
accuracy goes because you have this coating of lead on the inside of the barrel so what we thought was that they put it on there one, because it's a cheap way to make a bullet that you can shoot at say magnum velocities and secondly ah it protects essentially the gun from you know this leading and of course then you have the benefits of a lead bullet which is economy.

6 Q: O.K. John let's that the only other than the 9 millimeter that you sold that



you say.

A: Yes, my Harter is _____ and 250 ___

Q: Which I believe checks out right? (Pennell-yeahh I think yeah yeah it does) That .357 is the only other .38 caliber type weapon that you have?

A: Uh yeah I think so, I'm sure it is cause I yeah

Q: Umm and you said you don't like loaning your guns out so nobody other than you and Chris.

A: Right

Q: Have access to that gun right?

A: Right I mean I would I would let my friend Louis if, if he felt that he really needed to have something, incidentally he had a .38 caliber revolver it was a Rosse it was a 5 shot it was blue 3 inch barrel that and I I can't remember if I gave him some of these nyclads or if they were some of they hornady swage leads leads semi wire cutters, but I seem to remember giving him like a a cylinder full which is five for his gun because he he didn't

really have any ammunition for it.

23 Q: Was that on Friday or Saturday that you did that?

24 A: This has been several weeks ago when we were doing some other shooting.

25 Q: O.K.

26 A: And incidentally that gun was stolen a and I'm not sure when it was stolen, but that was if there vehicle was broken into they had it under the seat which I guess they really shouldn't have had it loaded and all that I you know and and I hope that this isn't going to cause them any

30 Q: No we're not checking out improper handling in motor vehicle case.

31 A: O.K. o.k. but they had that gun and a radar detector and I think his his wife is a waitress up at Good en Haus and she makes pretty good tips and what she does is she keeps the majority of her tip money in her car.

34 Q: Well that would be a reason if you we're transporting money.

35 A: Plus he is

36 Q: When, when was that stolen John?

37 A: I don't know I remember him mentioning it to me.

38 Q: And did he say whether he made a Police Report about it?

39 A: No he didn't he didn't

40 Q: (Pennell) Him being loaded pretty heavy

41 A: What's that?

42 Q: Those a nyclad rounds

43 A: Loaded?

44 Q: _____ heavy for the Rosse were they when you loaded them ____ were they loaded pretty heavy with powder or

46 A: Uhh I think let's see I can't remember I can't remember what we put them in if we put them in .38 special cases or .357 magnum cases, we have a policy wherein we do not load a cartridge um more than it can safely handles, let's say I have a .38 special case that has been loaded with a charge of say let's say .357 magnum o.k. it comparable to that now from that standpoint then at some point I might

forget that and give them to you and you have a .38 special caliber gun not a .357 magnum you could do yourself harm.

53 Q: Yeah, that's true.

54 A: So from that standpoint we if its a .38 special case we load it to .38 speical balistics if its a .357 magnum case we load it to .357 magnum balistics.

56 Q: What would that be in (grange/range) or whatever as far as the powder's concerned?

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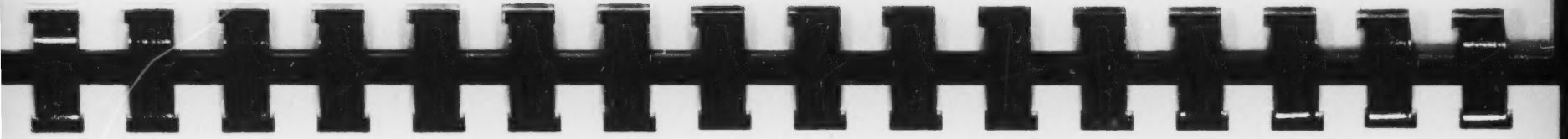
1 A: I I don't remember, my my brother-in-law essentially handles that entry of it. I have reloading books I mean I could look for you and tell you possibly.

3 Q: (Pennell - I was just curious what it would be) O.K. John um the other night o.k. with with the Ruger you say the officers forgot to give you the receipt?

5 A: Yes

6 Q: Right, did they threaten or promise you anything to get that gun at all, do you feel you were coerced into giving the

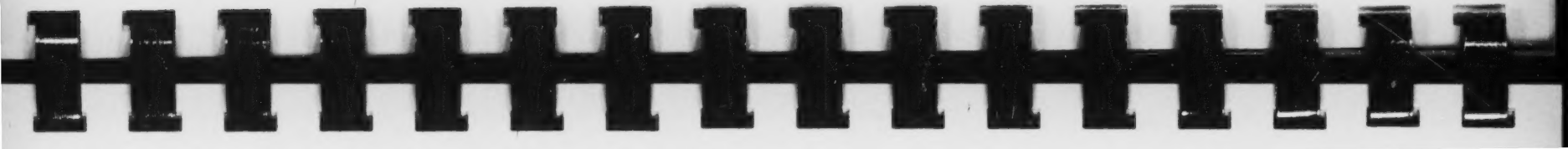


gun?

A: No, I was you know I I wanted to I I wanted to cooperate, if there is someone out there and it seems as though there is, that has done this, then they are they are a threat to everyone.

Q: What do you think, uh what do you think we oughta do with this person when we catch them? I mean your the person who found the body.

A: Oh man that's theres theres no excuse for that. I mean there again you know, I mean, I know Gayle pretty well and and I can't believe that she would would do something to somebody to provoke that? Do you know what I mean? Unless she felt provoked or something like that, but just from that standpoint that that someone who purposely without just cause and I'm I'm describing like self defense or something like that you know they I I and and don't take this wrong but I feel that the death penalty should be reinstated and that should be used because that's I mean to



take somebody else's life is just

21 Q: O.K.

22 A: That's so wrong I mean you

23 Q: O.K. o.k. John I don't know, that's not really up to what happens with this guy is not up to you, the question is really not up to me, it's up to the judge and jury.

25 A: Yeah

26 Q: And and I just kind of wondered what your feelings were.

27 A: That's that's how I feel about it now that might be wrong in that but that's that's so wrong and you know I mean I'm I I don't know personally but I know of people that have committed murders and and they they aloud to committ more murders um you know they a friend of mine that I work with said he worked with two fellows that killed their wives and and they served seven years in prison and got out.

33 Q: I just read that in the paper today. (Pennell - plastic bag ___ plastic cover for a letter sized pad up there there

should be a receipt (inaudible)

35 A: You know if there are people that are capable of doing something like that once.

37 Q: That's our job is to try to, the Sheriff's Department job to investigate it and if I think there is enough evidence, it's my job my job to prosecute o.k.

39 A: Yeah

40 Q: John I want you to understand o.k. like the other night there was no coercion um

42 A: Coercion I don't understand that.

43 Q: Uh no force used to get you to give the gun o.k.

44 A: No no there wasn't _____

45 Q: Same same thing applies, I made some notes of what the officers told me. I'd like to ask you about them, if it makes you to upset you don't

47 A: That's alright

48 Q: It just could clear up some things in my mind so we can get on with the investigation. I want you to understand that you are not in custody.

50 A: Certainly certainly I o.k.

51 Q: And your not under arrest. You can walk out and say, Tom I don't want to talk to you, you know.

53 A: O.K.

54 Q: At any time

55 A: Alright

56 Q: Um it's just I have some questions about what they say you said, maybe a

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maybe they misheard you know the Cap was on the intercom. Cap I just went over with John that he's not in custody he's not under arrest and I'd like to ask him some questions about the other evening.

5 A: Certainly

6 Q: And it's he'd like to have some first hand knowledge.

7 A: O.K.

8 Q: The the main thing John I'd like to talk to you about if it doesn't let me let me tell you something.

10 A: O.K.

11 Q: You lived through a tramatic

experience alright I understand that, I it's not my purpose to make you relive that o.k.

A: O.K. I appreciate that.

Q: However, I do have some questions, I'd like you to treat them as questions.

A: Certainly

Q: If it bothers you too much you no just say Tom I'd rather not talk about it.

A: That's fine alright

Q: O.K. and we'll go on to something else.

A: O.K.

Q: O.K. And a and if you do get upset you want to take a break or anything like that.

A: Certainly

Q: If you want a cup of coffee I don't know if you drink coffee or not I've learned a lot about health foods.

A: Yeah my wife is a real

Q: Earth person?

A: Yes ____ yeah well she's she's quite a gourmet cook.

28 Q: O.K. Well I'm a I'm a McDonald's type appetite o.k.

29 A: Well that's alright I mean I'm converted from that.

30 Q: O.K. Um so I I do have some questions about lifestyles here that I don't understand about things that and since we were you know we talked about the .357 ruger.

33 A: Yes

34 Q: We already went over that that's been in your possession since you bought it right?

36 A: That I yes that I know of with the exceptions of times that I've been I've been more or less around them when they've used it.

39 Q: O.K.

40 A: You know what I mean

41 Q: You do you haven't loaned it out to anybody?

42 A: No

43 Q: or anyone?

44 A: I don't I don't think I have

45 Q: O.K.

46 A: I mean I keep track of the gun in the house on a regular basis and I would be aware that it was missing if it had been stolen or something like that.

48 Q: The Ruger on Saturday, March 29, the Ruger was in its normal location?

49 A: In the kitchen in the kitchen cabinet above the sink on the lefthand side against the cabinet wall next to a jar of raisins in its holster.

51 Q: Going through this process of elinimation, the Ruger was in Wooster when you were south of Killbuck right?

53 A: Yes that I know of yeah that I know of

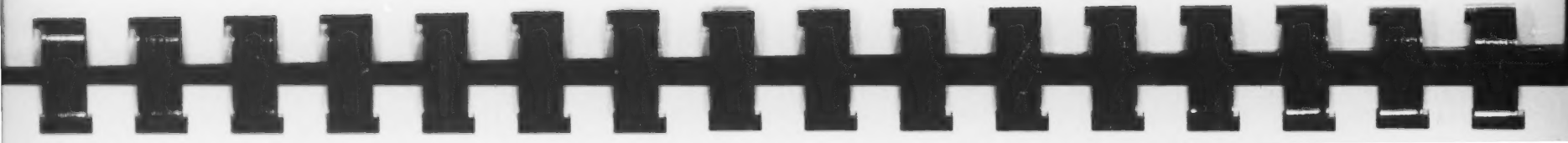
54 Q: Well is there a you weren't Wooster I know

55 A: I did not take the gun with me that day to shoot it.

56 Q: O.K. o.k. o.k. Um you didn't take it with you period, right? o.k.

t.p.12

1 A: No, but I yeah I I



Q: And as far you know Chris didn't have it out, she could have I know you weren't there, but as far as you know she didn't.

A: Yeah as far as I know she didn't have it out no.

Q: Um so let's go down the steps of elimination here, a did you bring any weapons with you Saturday?

A: Uh let's see, I have unfortunately a bad habit if I take a gun with me I get home late at night and sometimes I forget I have it in the truck and sometimes that carries over into the next day or two before I realize that I haven't got it with me and then I'll you know

Q: Sure

A: That I know of I did not have say my anschutz 22 rifle which I had been shooting previous to that in the week the the later part of the wek I think it was maybe Thursday with David Flickinger at his residence a I don't think I that would be the only gun that I would have with me at any chance that I would have with me

Q: Your Anshcutz 22?

A: Anschutz it's a bolt action .22 rifle.

Q: How do you spell Anschutz?

A: A-n-c-a-n-s-c-h-t-z I think.

Q: O.K Anschutz

A: Anschutz Anschutz yes

Q: O.K. o.k. a do you do you know where that is, it's still up in your r____

A: Yes it is yes

Q: And as far you know it wasn't in your truck Saturday that you remember?

A: Yeah that I that I know of it wasn't.

Q: O.K. Um any other no weapons in your truck you didn'g bring any weapons down?

A: I have a couple knives I mean right now I have a pocket knife with me I have

Q: Fire firearms though

A: Firearms no

Q: O.K.

A: You you know I

Q: Pocket knife

A: Yeah and I have one in my glove box and I have a skinning knife in my glove

box and and I have this with me but as far as as firearms I don't think so un un the only thing the only thing might be that Anschutz but I'm pretty sure I didn't have it with me.

38 Q: So if you were let's say this lab technician you know we've got firearms of Dennis's o.k.

40 A: This this is lab technician?

41 Q: (inaudible) Yeah this lab technician, if you were talking to her and telling her what king of priority to place on that .357 Ruger

43 A: Yes

44 Q: It wasn't even in Holmes County on Saturday, March 29, right?

45 A: No

46 Q: O.K.

47 A: That I as I said that I know of the whereabouts of that gun was where it is er not where it is now, but I mean where where it has been except when I would take it with me to shoot it you know something like that.

50 Q: Sure and for sure on Saturday, the Saturday we're talking about March 29, it wasn't

52 A: March 29 yes

53 Q: O.K. Um that helps us o.k. cause we have to prioritize things.

54 A: Sure sure

55 Q: Um you didn't bring any firearms to Meggyesy's nor were any of your firearms at Meggyesy's right, you didn't leave any guns there?

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1 A: Uhh I don't think so, I have in the past Dennis has used guns of mine and he has a you know what I mean he there have been times in my life when my parents when I was at home did not approve of me having guns or something like that so kinda on the side what I would do is let Dennis kind of keep tehm for me and I would utilize them when I was around him.

6 Q: O.K.

7 A: I hate to admit it but and in one instance that was the case.

Q: (Knock at door _ Pennell - o.k. thank you. There's your copy of that ___)

A: I appreciate it.

Q: And I don't know if you got a copy of that either, but that's a copy of that permission to search that you - (Tom) You can keep that for your files.

A: Alright alright thanks.

Q: Um I'm sure that this is an experience that you might not want to remember, but you can tell your garndkids about it. Um so you didn't bring any firearms to Meggyesy's nor were one of yours on the premises.

A: No I don't believe so.

Q: Arlight. Do you you remember John touching any firearms at Meggyesys?

A: Touching any firearms, uh no I don't remember touching any

Q: That Saturday, Dr. Houston took you kind of through or you took him through the basement

A: Yeah

Q: Did you touch any firearms at that

time?

A: Uhh

Q: Hand them to Dr. Houston anything like that?

A: I don't think I did

Q: O.K.

A: There again I really don't remember you know a lot about that day, I I remember seeing Gayle's face and I I do recall calling I think I dailed zero for the operator and then I asked for the Sheriff's Department.

Q: O.K.

A: I I do remember that

Q: O.K.

A: And

Q: Well let's uh

A: (Sigh)

Q: O.K. just we'll just back off a little bit o.k. from

A: Alright

Q: From Meggysesy's there o.k.?

A: O.K. yeah

Q: You were at your mom and dads right

working on a tractor?

41 A: Yes

42 Q: Beforehand?

43 A: Yes

44 Q: O.K. And you uhm had some cider with you or

45 A: Yes

46 Q: O.K.

47 A: My parents have freezer space that they have let me utilize and they are going to be needing that freezer space and one of the things I had in that freezer space was some jugs of frozen cider and I thought since I've been literally giving it to everybody, not not really but I mean I've been you know we've been drinking it, my folks have been drinkin it uh I've in the past given cider I I gave some to- Vic Brown here in town a because he does my income tax and when I came to see him about squaring off with him I took him a jug of cider a I I wanted I I felt concerned for Gayle being alone and and I had felt the last couple days it it might

sound crazy to you but but I I just I just felt like I should just keep track of her a little more that I was you know or just

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to see if she was o.k. see if she needed anything so I thought well I'll just take her a jug of cider and see what she's going to do for Easter and you know.

3 Q: Why would you do that John?

4 A: Why would I do what, take her a jug of cider?

5 Q: Why would you want to keep an eye on her? I can understand why you'd take a jug of cider, but why would you feel the need to keep an eye on her?

7 A: Well she's more or less I mean they live back in and the relationship that I have Dennis when when I'm not around he more or less takes care of my you know wife and that if if they they know that if they need anything and I'm not around they can call him and and the Meggyesys know that if they need anything from me they can call me, and that's that's you know

Q: _____Dennis wasn't around. Had you been checking in on Gayle a before like Saturday?

A: yes, I was I stopped to see her well actually it wasn't to stop to see her I stopped to see Tom Johnston and his apple orchard which is down there and its couple mile away from them I I wondered how he'd been and see he had a stroke several years ago and he doesn't get arounds as good as you know he could have and ____ he's by himself and he lives upstairs and that you know sometimes he needs like heavy stuff moved or a you know crates of apples or something you know what I mean cause they're like 50 or 60 pounds he can't handle them by himself or with one hand so you know I I and he is a very dear friend of mine and and I you know

Q: That was on Saturday that you stopped back to see Tom?

A: No that was that was the day before

Q: On Friday?

A: That was Friday yes.

27 Q: On Thursday did you stop in to see Gayle?

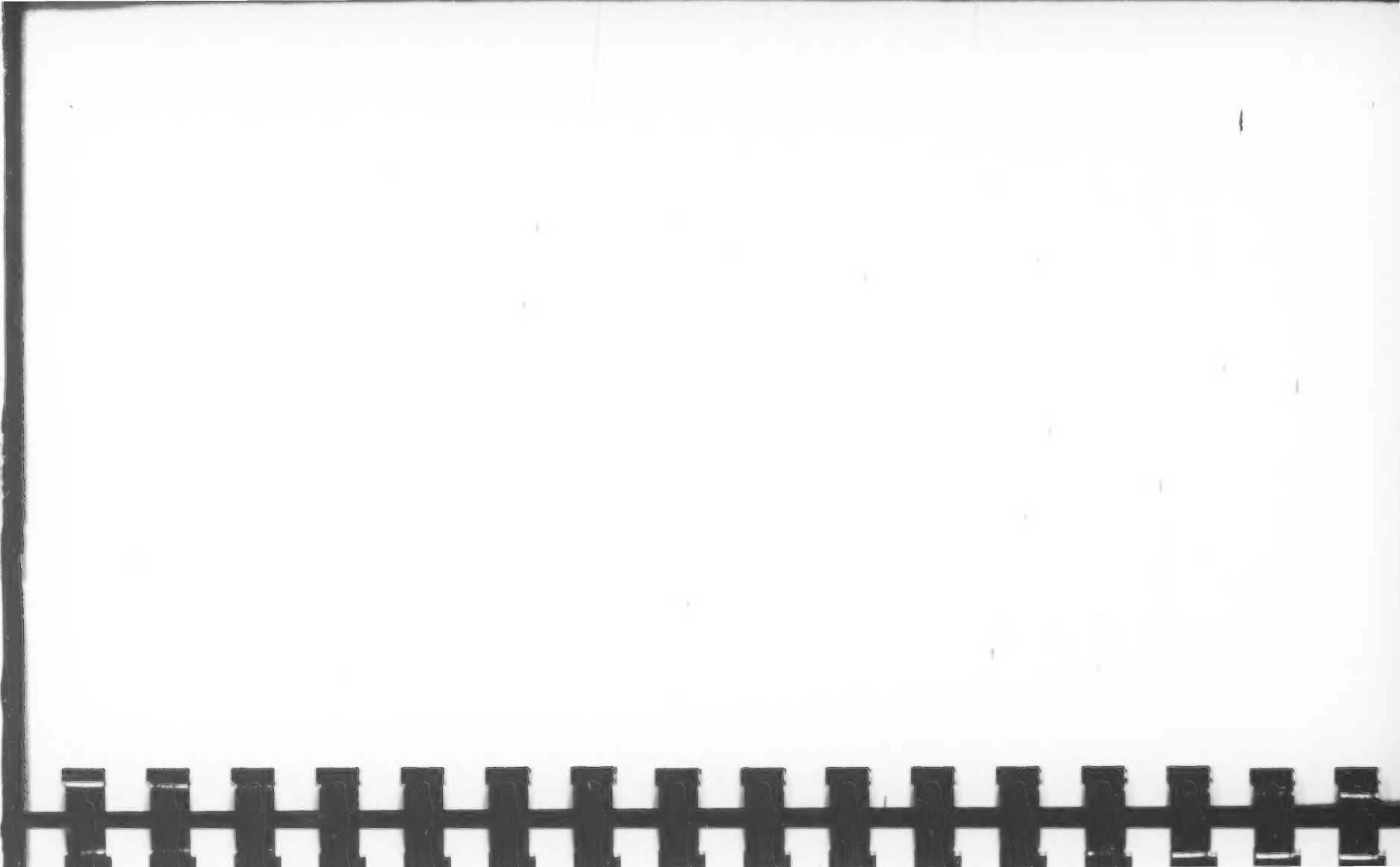
28 A: No I called her on the phone because Dennis had told Dave Flickinger and I who I've been working with on a job for Dennis to call Gayle or go down and turn in our hours and we would be paid for that week o.k. we essentially what we do is we submit what for hours we have on said job a at at so much an hour and then you know were were paid like that so I I I talked to her Thursday to try to coordinate something to where David and I could go and like that and was Dave was there the following week I believe and I'm not sure when it was, but he has a real thing about dogs although he has dogs he didn't like being there with the German Shepherds and that

37 Q: Oh yeah those two German Shepherds the Meggyesy's have?

38 A: Yes yes

39 Q: How a how are they towards strangers?

40 A: Uhh



41 Q: Have you seen them when

42 A: They're initiall well Treasure the male is very friendly and you know he since since I can remember you know he has greeted me like like he would one of the Meggyesys I mean he's just you know I mean he's he's just a good dog and I know him well and you know that now Duchess is the female, she's the darker of the two, she's more likc an elkhound you know she's more almost like a wild kind of a inclination there and she is very standoffish but she's real vocal I mean she's a big fraidy cat you know cause at one time when she was a puppy she came close enough to me that I petted her and it just freaked her out and you know she was barking and she and she finally came over and smelled me and I reached down to pet her and shoo and ever since then she toward me and other people well toward anybody I mean she's just real standoffish and with the exception of the Meggyesys you know I mean when I go there when I open my truck door

she's right there barking and then she takes off.

56 Q: Dave a do they usually bark at strangers coming up though or?

t.p.15

1 A: It depends.

2 Q: O.K.

3 A: It depends

4 Q: O.K. Umm

5 A: There again I haven't spent a lot of time around the Meggyesy home when other people have been there or come you know what I mean so I don't I can't really

7 Q: O.K. So Thursday you called Gayle

8 A: I called Gayle

9 Q: How about Wednesday, did you go to see her on Wednesday?

10 A: No I don't think so

11 Q: Tuesday?

12 A: Uh I was working I I did a job for Paul Wise in Glenmont Monday and Tuesday a

13 Q: O.K. So either Tuesday or Monday we're going back you wouldn't have been down to Gayles?

A: No

Q: O.K. How about over the previous weekend, Saturday or Sunday?

A: Uh no because I a know Dave went down to get our checks and and got em and then I stopped at my house cause he was comin to Wooster and I wasn't there unfortunately he he knows Chris real well and so he stopped and dropped off my check from from the week before that.

Q: So you weren't there over the previous weekend, how about Friday or Thursday which takes us back to when Dennis left right?

A: O.K. the the week prior to

Q: The week before, Friday and Thursday

A: O.K. no

Q: You weren't down there?

A: huhuh no I don't think I was

Q: As a matter of fact except for o.k. you were down Saturday when you found

A: I was down Saturday.

Q: Were you downyou were down the day before?

31 A: I was down Friday

32 Q: O.K.

33 A: Yes

34 Q: From that Friday when would have been the last time you would have seen Gayle, before they left for Disney World or?

36 A: The last time I saw her in person oh boy its its been a long time I've talked with her on the phone be see when I was in Glenmont living with my folks what I would do is drive to the Meggyesy's in the morning and then Dennis and I would load up and then go to the job so I would see Gayle morning and usually evening then because they you know Dennis would what he would do is he'd get yp and he'd put his slippers on and then what he'd do is put his socks and shoes on and I'd drink a cup of coffee or something while he would do that and Gayle would pack his lunch and then we'd go to work.

44 Q: John have o.k. I I gotta ask this question

45 A: O.K. o.k.

46 Q: I don't mean anything by it

47 A: Alright

48 Q: Have you ever threatened Gayle Meggyesy?

49 A: Threatened her as far as what?

50 Q: As far as any kind of physical harm

51 A: Oh no no

52 Q: You never tried to hurt her?

53 A: No

54 Q: Have you ever said that you're going to hurt her?

55 A: No

56 Q: O.K.

t.p.16

1 A: No

2 Q: Let's turn it around then, have you ever felt threatened by Gayle Meggyesy?

3 A: Uhh she and I assume you're aware of this one element that I talked to Captain Pennell about.

5 Q: He mentioned something about a feeling

6 A: Yes

7 Q: That you had

A: O.K.

Q: Why don't you try to explain that to me please.

A: O.K. Gayle hmm I can I say this well Gayle I feel was involved in some I I I guess they would be satanical activities. o.k.

Q: O.K. How what on what do you base those feelings?

A: Uh things that she has done around me uh things that that she a has said to me a you know you know what I'm saying.

Q: O.K. What kind of things has she done around you and what kind of things has she said to you?

A: O.K. I have I have been around her and here again this is one of the reasons why I don't I'm not around Gayle when Dennis isn't around Gayle.

Q: O.K.

A: Because she oftentimes takes the opportunity to present this kind of thing to me.

Q: O.K. why don't you tell me what kind

of things she would present.

23 A: O.K. Uh she I personally believe in reincarnation as a does Gayle and and I'm not sure of the beliefs of the other Meggyesys

25 Q: Alright

26 A: I feel as though Dennis does

27 Q: O.K.

28 A: Uh Uh let's see I I've lost my track of thought sorry.

29 Q: O.K. The question was what kinds of things has she done around you, what kind of things has she said that leads you to this this belief?

31 A: O.K. yeah now I remember o.k. when I have been around her and Dennis has not been in on conversation let's say he has been uh somewhere else in the house or in a different you know a different part of the house or outside there or something like that and I have been in direct contact with gale she has mentioned people that she thinks she was in other lives and she has uh mentioned things that she has

done in other lives uh and and she ahs I I I get the feeling by by the way I reacted and and what I felt and that that she had encouraged a wrong wrongful or or not really wrongful bad forces let's say o.k. to be around her or or she had contact with them or do do you know what I'm trying to say?

41 Q: Well uh it's kind of a little bit out of my ballpark.

42 A: Yeah me too

43 Q: Well let's let's deal with what you've told me.

44 A: O.K.

45 Q: O.K. You say that she re that she has memory or prior lives?

46 A: She has memory of prior lives

47 Q: As i understand it that's a little bit unsual for even a person who believes in reincarntion to have memory of a prior life or not?

49 A: Well it is and it isn't because there are people who are trained who can uh take you back to the point where you're where

you don't have you know kind of crust of modern day living and you can remember uh I I I don't know who these people are what they're called and that but I my wife uh Chris uh knows of one of these individuals and she recommended that Ivory Sinclair at one time go to uh one of these individuals that she knows of and he helped her to uh recognize some things that were troubling her that were from other lives she claims.

t.p.17

1 Q: O.K.

2 A: Uh

3 Q: John thesse would she remember the personality the person that she was in prior lives?

5 A: Yes seh

6 Q: do you remember her mentioning any names of who might have been?

7 A: I think she told me that she felt as though she was Cleopatra in Egypt, that she was Guenevier(sp?) in the times of King Arthur and all that which to my knowledge is all fictional it is not

historical uh and she can remember being other prople and I and I those two in particular stick in my mind.

Q: And you say these bad forces

A: Yes

Q: Are they from the prior lives or what's their

A: Uh no they they were not although she made me aware that she was able to utilize and manipulate things including those and and I can only assume that these are like demons or something like that ___

Q: O.K. You mention the word satanic

A: Yes

Q: A to me that means devil worship

A: Yes

Q: Is a do you feel that she believed in satan as a person?

A: I don't know

Q: or power or anything?

A: I don't know

Q: She never go that far?

A: Yeah, in my own mind there is the Good Lord which is all good and there is

satan which is all bad o.k. that's and there's a definite line o.k. and and the Good Lord is truth and light and you know what I'm saying and satan and and fair o.k. and satan is trickery and dishonesty and evil and you know what I mean.

31 Q: O.K. o.k. So now that we know basically what we're talking about, how what kinds of things would Gayle say to yu that would make you feel you know when we started this whole thing out had you ever threatened Gayle no you said.

34 A: No

35 Q: However did you ever feel threatend by Gayle and that's when we got into this.

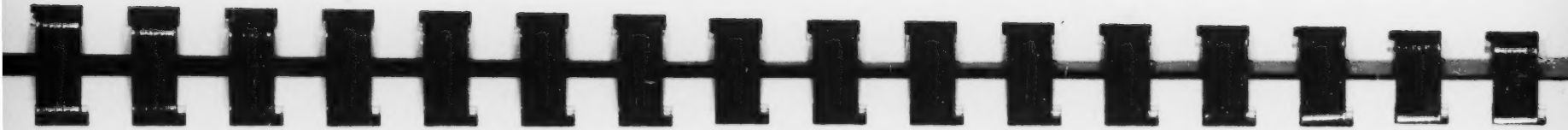
36 A: Right

37 Q: How would you feel threatened by Gayle?

39 A: Uh I have come to have a very strong faith expecially here in these last few days o.k. in the Lord o.k. and and I hope I'm not making anybody uncomfortable

40 Q: No no problem, go ahead.

41 A: O.K. Cause you know uh I'm sorry I



lost my train of thought again.

42 Q: O.K. You I the question was how did Gayle by talking about these forces or something make you feel threatened?

44 A: O.K. alright alright Uh uh uh I can give you a for instance, there was on point when Gayle felt as though I had several demons in my body and that she was going to case them out of me and that she was going to make them go away.

46 Q: She was trying to make you feel that way or you felt that way?

47 A: She no she told me that I had uh several demons in my body and that she was going to cast them out of me and that she was going to make them go away.

49 Q: O.K.

50 A: O.K.

51 Q: What was you reaction to that?

52 A: Well I my reaction was disbelieve o.k. my reaction was that Gayle you've had a little to much of the earth today. (laughter)

54 Q: (Laughter) by the way that does did

she abuse any kind of narcotic any kind of hallucinogen that you know of?

56 A: That I know of no although I

t.p.18

1 Q: Your saying that in jest

2 A: Yes ____ it's a joke, she has taken through the years very very large doses of herbs and um has used oils and things like this that are not controlled substance but I have to be suspicious that their misuse could be harmful o.k.

5 Q: O.K. So she would tell you that you were possessed by demons?

6 A: Yes

7 Q: And she was gong to are you familiar with the term exercise?

8 A: Yes I think I know what that means.

9 Q: That means cast things out.

10 A: O.K.

11 Q: Um and did she mention any procedures that she was going to

12 A: No no not really she she a couple times tried to rub oil on me and a you know stuff like this and wanted me to buy

various things from her a little trinkets or oils or this or that or the other thing uh

15 Q: Forcefully?

16 A: No not no she just thought that I would be better off if I had them and I had that that a I would be better off paying her for all these things.

18 Q: Well Gayle was in that business wasn't she?

19 A: Yeah

20 Q: Do you thins she was just trying to drum up business?

21 A: Uh well I think that that probably had something to do with it, but I I definitely remember there being instances when I felt as though she definitely had some influence on how I was feeling, what I was feeling you know things that I was in contact with that I did not like and I felt as though they were bad things they were not healthy good forces.

26 Q: Do you feel John that she was trying to control you, is tht what you're saying

to me that through the use of these forces she was trying to influence how you felt about things?

29 A: Hmm I I guess I haven't really thought of that per se

30 Q: What I'm trying to get how is this activity, how would her telling you about the demons and about how she wants to cast them out and then trying to sell you stuff, how would that make you feel threatened?

33 A: It wouldn't really make me feel threatened her trying to sell me something or something like that I guess I was very uncomfortable several times when I was around and she told me that she had sommoned this or that she had sommoned that and now she was going to make him go away uh

37 Q: Did she say that there was a presence

38 A: Yes, she indicated that there was a presence and I could definitely feel that there was something very bad by me o.k. it just just

40 Q: Were there any manifestations, physical manifestations, did you see anything, did you hear anything, did you smell anything?

42 A: Uh boy I I don't remember really seeing anything, uh I kind of remember an odor that was not characteristic of the house ___

44 Q: Could it have been an herb though a new herb that she was cooking up or something maybe or was it

46 A: Possibly but there again I you know

47 Q: It was just a I guess when we were growing up a "creepy" feeling?

48 A: Yeah I mean

49 Q: O.K. I don't know (inaudible)

50 A: I I guess I I don't know I feel as though I'm somewhat intuitive and sensetive to certain things and obviously when we think along certain lines we are more aware of those thinks o.k. uh just like ____ _____ to give you a you know ! no trying to waste much time here but let's say all of a sudden you're going to

buy a horse for your daughter so then you start seeing horses for sale all over the place that you weren't even aware of before see that kind of a thing uh

56 Q: So and this would happen she wouldn't do this when Dennis was around?

t.p.19

1 A: No she would never do it

2 Q: Do you think Dennis, what would Dennis' reaction have been?

3 A: Oh he didn't like it he was aware of some he was aware of some of this stuff but he wasn't aware of all of it and she was very set on on me not telling Dennis and and keeping these things from him you know that kind of thing although I must admit I felt as though at times I needed to make him aware of what was going on so that he had some chance of havin a you know what I'm saying.

8 Q: Yeah did he ever a well no I don't know what you're saying, why why did you want to why did you feel you ought to tell Dennis?

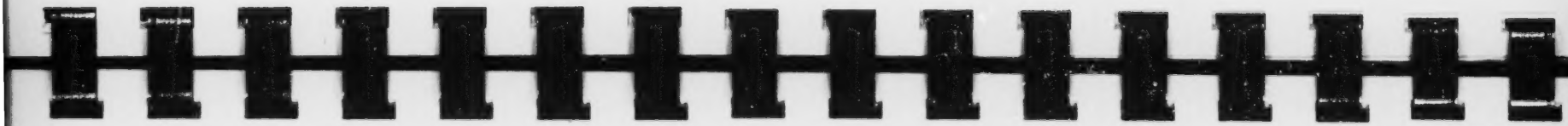
A: O.K. Like for an example I would be there in the morning and I'd be drinking my cup of tea or whatever and he'd go downstairs or something and then all of a sudden Gaule would come and (Humming)

Q: She would come right up by you and go hmmmmmmmm?

A: Yes you know yeah and all this and I and I like (gagging sound) you know

Q: Kind of blow you away huh?

A: Yeah and then a you know and then as soon as Dennis come back up stairs she'd snap into oh hi honey you know this kind of behavior and then you know when we would go then I would say hey you know Gayle's acting a little bit funny this morning here and I refer to a things that he had knowledge of as far as her activities with this and he would say well you know yeah I kind of sensed that but I haven't you know so at least when he goes home at night after putting an eleven hour day he gets home at 8:00 you know the last thing you want to do is have to deal



with somebody that's you know what I mean, you can appreciate that.

25 Q: Sure sure you don't want to have to go home and throw the spooks out of the house right?

27 A: No you just you just want to go home, eat your supper, take your _____

28 Q: Did you ever discuss this with Dennis then John?

29 A: Oh yeah

30 Q: O.K.

31 A: Yeah

32 Q: And what was his reaction?

33 A: Uh it was not of surprise and he had similar feelings tht I did about about these things as far you concerning Gayle and that.

35 Q: O.K. Let's a we've kind of gotten away from it now let's get back.

36 A: O.K.

37 Q: into a little bit to Saturday, March 29?

38 A: Yes

39 Q: You were alone when you went to

Meggyesys, right?

40 A: Yes

41 Q: Nobody was with you?

42 A: Just me and my jug of cider.

43 Q: O.K. and you and your jug of cider and are the dogs are there, remember the dogs being there?

45 A: No I don't

46 Q: O.K. and uh did you notice anybody else on the premises?

47 A: No no I did not

48 Q: Uh was anybody else in the house besides Gayle that you remember?

49 A: No not that I remember, I think I would have been able to tell if there'd been somebody in there.

51 Q: Ditto right and if uh and you didn't see anybody outside.

52 A: No

53 Q: As a mater of fact, did anybody was anybody there at Meggyesys besides you and Gayle until the the Emergency Squad arrived, anybody else come?

55 A: I don't think os I I you know I don't

think so.

56 Q: That 's one thing you now that we wanted to cover.

t.p.20

1 A: Right yeah

2 Q: John I know this is hard for you but I want it's kind of important because you were the first person to see the body.

4 A: Yes

5 Q: According to what Captain Pennell told me

6 A: Yes

7 Q: And and you're a hunter right o.k. you hunt

8 A: Yeah a little bit more or less a shooter

9 Q: I know that this is a persons body and it's a person that you knew o.k.

10 A: Yeah

11 Q: But I'd kind of like you to approach it from the aspect of a of a deer o.k.

12 A: Alright

13 Q: And how you would analyze a deer you know shot or bow and arrow or whatever

o.k.

A: Mhhmm

Q: According to Captain Pennell the other night you said that you saw blood on Gayle's side?

A: On her would be her left leg

Q: O.K. her left leg

A: Yes

Q: Did you see any on her sides, on her back?

A: On her

Q: On her like under her arms anything like that?

A: Mhhh (no) mmhh no I I just I I I re I came upstairs looking for her and and the reason that I did that instead of gong away and not entering the house and that is because you know I was very familiar with the house and I was I felt comfortable that I could this and not offend anybody although I you know I'm someone that I've been raised you know you don't walk into somebody's house.

Q: Right

31 A: I was going to come upstairs leave her a jug of cider on the kitchen table with a note telling her that I'd been there, leave for my house which I think I still have in my wallet and and go. Yes think I do this is what I was going turn in ____ a and I don't know if I was gonna if I would of left a note on the back of that or or what but that's

36 Q: O.K. But obviously since you still have it with you you don't have you didn't never give it to her right? It had never been (inaudible)

38 A: _____ no yeah I I remember coming upstairs and

39 Q: O.K.

40 A: And you know I couldn't find her and I thought what

41 Q: Where did you look, do you remember where you went first?

42 A: I think I called when I got in the basement, I thing I came upstairs and I and I before I got to the top of the stairs I said Gayle it's John you know and

uhm I think I just stepped into the kitchen then but I don't really remember I don't know I might of I might of looked in the living room you know cause a lot of times she will be in there reading or something like that but

47 Q: O.K O.K. Let's let's let's do another thing that Captain Pennell remembers you saying or maybe it was Detective Garver, that you only touched her arm is that right? Do you remember moving her at all?

50 A: I don't remember no I I

51 Q: Did you touch her at all?

52 A: Yes I'm pretty sure I did cause I I seem to remember coming upstairs seeing her and going over to her because it looked odd in my mind that she would be on the floor in the corner of the kitchen.

55 Q: What position was she in?

56 A: She was sitting on the floor um the refrigerator was here

1 Q: O.K.

A: O.K. She was sitting kinda like alongside the refrigerator and I remember seing her onw leg stuck out like this and I don't remember what position thie leg was in.

Q: O.K. That would be the left leg or right leg was

A: The right leg was was like if she'd been sitting on the ground she was like this and um I thing she had her arms down in front of her and she had her head back I think or maybe to the side or something or

Q: O.K. o.k. Um

A: She didn't she didn't have she did not have her head down like this.

Q: It was not forward

A: I was not down like that it was either like this or it was back or off to the sides.

Q: O.K. o.k.

A: But I remember seeing her leg and then I remember looking at her face.

Q: And what do you remember about the

fact?

17 A: Shoo she just looked she just looked horrible.

18 Q: Do you remember anything specific?

19 A: (Sigh) let's see ___ remember her face, a lot ofthis I've tried to forget about because

21 Q: Sure I can understand let me let's back off from making you focus in, the question was do you remember touching her?

23 A: O.K.

24 Q: And you said that you

25 A: I I'm pretty sure that I that I maybe got ahold of her arm or touched her leg or touched her leg I'm pretty sure I got ahold of her arm I may have touched her leg too.

28 Q: And what was your purpose in doing that?

29 A: To see if to see what was the matter with her if she was if she knocked herself out or bacause I'd talk to her and she you know hadn't responded and she and she looked awful so so I think I went up and

and got ahold of her and then I could feel that you know she obviously wasn't alive I I mean I could tell that.

34 Q: So you didn't o.k. her head in that position being laid back against against the refrigerator or cabinet was that her head?

36 A: Uh she she was let's see looking at the refrigerator I think she was leaning up against it which would the the regrigerators right side

38 Q: O.K.

39 A: And uhm

40 Q: And her head was back?

41 A: I think it was back, it was either it was either you know that that she had her back flat against like you have your chair there it was like that or that it was back.

44 Q: O.K.

45 A: But if she was leaning up against the refrigerator she probably didn't have her head back she had her head as you would say on your chair there

47 Q: O.K.

48 A: That's what Logically I would assume.

49 Q: O.K. John um did you notice any firearms in the vicinity of the body at all?

50 A: No I didn't really look for any I mean

51 Q: O.K. You just don't remember

52 A: There I mean there again I it's like I didn't look for any glasses in the kitchen and I don't remember seeing any and I'm sure there was

54 Q: Did Gayle have her glasses on?

55 A: Uhh let's see I don't think she did I don't think she had them on.

56 Q: O.K.

t.p.22

1 A: She had them on Friday when I was her with the people from Youngstown. She had them on then I'm pretty sure.

3 Q: (Pennell) She normally wears glasses does she?

4 A: Uh depends on what she's doing.

5 Q: Does she use them for reading or is

it she uses them for farsighted, nearsighted?

A: Mmmmm I I'm not sure what her vision is, but but there are you know I sometimes she has them on and sometimes she doesn't so

Q: Um did you feel o.k. do you remember while you were in the house obviously a shocking experience o.k.

A: Mhhmm

Q: Do you remember any presence, feeling any presence?

A: It felt like there was something very bad there.

Q: O.K.

A: It I I do definitely remember that.

Q: O.K.

A: It felt like I had walked into a cloud or I mean I just felt really creepy and uncomfortable and I didn't want to be there and and that feeling was still there later on in the evening when I came back into the house onto the addition there and they a took my footprints and whatever

they did to my hands.

20 Q: Um so basically what we're coming down to John is and the whole point of us talking to you

22 A: Mhhhm

23 Q: You did not shoot Gayle Meggyesy right?

24 A: No no no certainly not no there's no way that I could boy there's no way I could shoot somebody, I'd have to have an awful good reason and there's no way I would let Gayle put me in that position I mean if you know what I'm saying if she I I would just walk away from her I mean I wouldn't

28 Q: O.K.

29 A: You know what I'm saying?

30 Q: Sure

31 A: I would

32 Q: Um Gayle was quite a writer

33 A: Mhmm, (yes)

34 Q: Wasn't she?

35 A: Mhhmmm mmhhmm (yes)

36 Q: She wrote just about everything down,

you ever remember Gayle questioning you or writing things down about questions and answers that you would have given her?

39 A: No, she would when she would meet when she would see me say when when she would um when I'd be around and and Dennis would be off somewhere she would she would tell me specifically about something that she had recalled about me in another life she claims to have known me in in all kind of different lives and

43 Q: I'd be talking about this life

44 A: O.K.

45 Q: About any problems that you've been having or anything like that?

46 A: Uh no she was and ___ she was one to make things up I felt I mean you know she like it would be like me sitting here and saying you know Tom I'm aware that you have a fetish for chocolate chip cookies.

49 Q: O.K.

50 A: Now I've been aware of this fetish for sometime and I want to help you with this fetish so I'm going to give you this

$100 gift certificate to the chocolate chip factory south of Millersburg and I want you to go in there and eat yourself to oblivion, that kind of a thing you know and it's

54 Q: Has she ever done that with regard to you that you know of John?

55 A: Uh yeah she had she had she had supposedly felt like I was this or that or you know and she wanted to help me with it and you know and and I was just kinda like

t.p.23

1 Q: Did she kind of interview you?

2 A: Uh well she would ask me you know like how long have you had this chocolate chip fetish you know kind of thing.

4 Q: Mhhmm would you respond to her, would you answer her question?

5 A: Just you know kind of more or less to satisfy her so that I could you know

6 Q: Let me give you a for instance, would she have I thing Captain Pennells' had kids, I've had kids and now your a new father o.k.

A: Mhhmm

Q: There is aperiod of time after a woman delivers birth to a child

A: Mhmmmm

Q: Expecially my wife had them by c-section

A: That's the way my wife did

Q: Is that what Chris, when the woman's the mother's whole life is wrapped up around the child

A: Mhhmm

Q: O.K. do you remember ever discussing any anything like that with Gayle?

A: No

Q: O.K.

A: No that's not something that I would talk about you're a you're you're asking me if I have these feelings toward my wife or child or

Q: Yeah any any did Gayle ever try to discuss with you your feelings about your child, about your wife, about the amount of time she had to give you, do you remember that?

24 A: No no that is not something that I would discuss, I would discuss something like that with my father I I wouldn't discuss it with with you say ro you know

26 Q: Sure o.k. (Pennell) What about Dennis?

27 A: Yeah I would probably discuss it with Dennis

28 Q: Uhhuh

29 A: I mean I and I ahd I I told him well I mean you guys being fathers you know that that a a and here again too you know I was essentially still on my honeymoon then bammo you know I'm a new dad well you know I'm no longer in number one position you see.

33 Q: Yeah I can dig it (Pennell)

34 A: You're you know what I'm saying

35 Q: Right

36 A: You are more or less the outer crust now the protective crust and there's these two little circles inside of you see and you got to fend off the meteorites and and keep putting the food on the table and

all this you know and and a so yeah so I'm down to about one-tenth of the attention that I had been getting understandably it was pretty intense because we were on our honeymoon you know and all that.

42 Q: Cap do we have, we had a note that we would like to just go over it with you. (Pennell) Let me see if, I can find right quick, I'll be right back. Just so you know you know where we're coming from (inaudible) She wrote down you know I mean a lot.

45 A: Oh yeah she she had a pretty good imagination she really did.

46 Q: O.K. o.k. We'd just like to go over it with you to see if there's anything to it or if it kindles anything in your memory about that.

48 A: That's fine

49 Q: Um I've just about gone through most of my notes.

50 A: O.K.

51 Q: How about that you know let's talk about something that's not very stressful.

52 A: O.K.

53 Q: How about that Ruger, are you pretty good with it?

54 A: Uh I do there again it's it's a two and three quarter inch barrel so it it's accurate it's it's accuracy is not like

56 Q: (Inaudible)

t.p.24

1 A: I I I had a Colt Python that would and honest to God shoot a group at fifty yards like that (inaudible) on a bench now not off hand you know cause I'm not that good a shot but it would shoot like that o.k. now that Ruger for what it is I mean a fifty yards it'd probably shoot a group about like this

5 Q: About your armspread?

6 A: Yeah about three feet probably you know I most of the time when I shoot I shoot at like (sigh) 25 30 yards sometimes we go ridiculous and shoot at 50 yards but I mean you know

9 Q: 25 30 yards usually where you're proficient or whatever you know

A: Yeah

Q: At least hit a can?

A: Yeah and now my brother has a Smith & Wesson Model 19 that I can hit fair I can I'm pretty proficient with that if I shoot its

Q: But that's a little longer barrel?

A: Yeah it's a six inch barrel and it's you know physically a bigger gun you can hold onto it better you know.

Q: O.K. Thesse are some writings a do you recognize the handwriting John?

A: Am I allowed to touch this?

Q: Well why don't we just

A: O.K.

Q: do you recognize that handwriting at all?

A: It looks like Gayle's writing.

Q: It's it's not yours?

A: No

Q: O.K.

A: No

Q: O.K.

A: I can I can first of all I don't

write I print, I haven't written for since I was in school because I can print faster than I can write you know you're so worried about making everything that is legible that and I could never make it legible and and be able to be anyway proficient in writing so I always just print a so yeah.

33 Q: Yo've seen her writings before?

34 A: Oh yeah oh yeah

35 Q: O.K. I'd like to read some parts of this note to you and see if it rings any bell with you.

37 A: Alright

38 Q: A wife a family I've always wanted a wife and family o.k.

39 A: Mhhmm

40 Q: I um that kid sqawls and demands attention, everything is upset different. I feel rejected Chris doesn't have time for me anymore I think that she doesn't love me it hurts. Does that ring any bells?

43 A: I assume this is about me?

44 Q: Well you know it seems to be a man or

Chris seems to

45 A: Well Chris I have a wife names Chris so

46 Q: And you just had a baby?

47 A: Right

48 Q: O.K. Of course I love the baby but I resent her a I hate her all at the same I wish she had never come and changed things. Does this sound familiar at all?

51 A: Sounds like a lot of Gayle's jargon that's what it sounds like, that is very typical of stuff that she would present me wit I mean going back to like the chocolate chip cookie fetish kind of thing you know what I mean you just you're just sitting there drinking a cup of tea in the morning and Dennis goes into the bathroom and she comes and sits down and says now John you have you have this chocolate chip cookie fetish you know and you just

t.p.25

1 Q: What kind of she didn't say chocolate chip cookie

2 A: No no she I'm just making that

Q: What what did she say to you?

A: Uh boy there again this isn't something that I would retain cause it you know I mean it's

Q: Sure

A: Uh I honestly don't remember, if you give me let's see what what's some of stuff that she would say I I really don't remember cause it's you know

Q: What was it related to family life or?

A: Uh it was related to a lot of it was actually related to my relationship with Dennis

Q: Oh o.k.

A: O.K. It's almost as if she was afraid I was gonna tell Dennis something you know, she wanted to keep Dennis out of what she was doing and she didn't want me to say anything to him or anything like that you know and hey I mean I just work for the guy I I try to keep my relationship with him as a friend and my relationship with him as an employer

separate there again it's impossible but that's how I try to you know

19 Q: _____ work it

20 A: Yeah because

21 Q: I understand that. Well John that's most of my notes um I'd kind of like to end up unless there's is there anything at your end Cap. Nothing that I don't. O.K. Well John I'm I'm going to be absolutely up front with you o.k.?

24 A: Alright yeah

25 Q: Cause I think that's what you came here for that's what you want to know right?

26 A: Yeah I I don't know what's going on and I and I also have another matter you are basically my attorney o.k. although not you can't be in this I understand

28 Q: O.K.

29 A: Because of your position as Prosecutor

30 Q: Right

31 A: O.K. I understand that and I don't want to pose a problem to you in coming to

you o.k.

33 Q: O.K. Actually well if you're concerned about where the Police took your weapons the Prosecutor would be a logical place to come.

35 A: Yeah yeah well that's you know

36 Q: Um John a you know I want to make sure that we go over that you know that you you don't have to answer any questions

38 A: Yeah I know that

39 Q: At any time

40 A: Yeah

41 Q: And what's more if you were to tell me Tom I shot Gayle Meggyesy that that could be used against you.

43 A: I realize that

44 Q: So you have the right to remain silent

45 A: I yeah

46 Q: O.K.

47 A: Yeah

48 Q: And and that anything that you were to tell us that that might be a incriminatory can and will be used against

you.

50 A: Of course

51 Q: And if you shot her I'm going to prosecute you o.k.

52 A: Yeah

53 Q: Alright

54 A: But you're not going to be able to because I didn't.

55 Q: O.K. Well

56 A: (Ha ha)

t.p.26

1 Q: A futher more I'm not your attorney you understand that?

2 A: Yes I do understand that.

3 Q: You have the right to go get an attorney

4 A: O.K.

5 Q: at any time.

6 A: Alright

7 Q: O.K. You have the right to a if you can't afford an attorney to have one appointed for you.

9 A: I I ___ that yeah

10 Q: O.K. at no cost.

11 A: O.K.

12 Q: Um and you understand those rights?

13 A: Yes yes I do.

14 Q: O.K. John um and knowing those you don't have any problem with talkin to us right now o.k.

16 A: Yeah

17 Q: Is that right?

18 A: Yeah

19 Q: O.K. John we've got a problem

20 A: O.K.

21 Q: That Ruger .357

22 A: Yeah

23 Q: BCI says

24 A: BCI is?

25 Q: That's the Bureau of Criminal Identification

26 A: Yeah

27 Q: and Investigation

28 A: Yes

29 Q: That it doesn't look good as far as matching up the slugs from Gayle's body with that weapon.

31 A: With that weapon

32 Q: Right

33 A: It doesn't look good how?

34 Q: It doesn't look good for you.

35 A: Why?

36 Q: Because it looks like that weapon

37 A: Yeah

38 Q: fired those slugs into Gayle's body.

39 A: Well there are there are other weapons certain I mean you can go and buy a Ruger

41 Q: I understand

42 A: speed six you can duplicate the gun

43 Q: I understand that John however

44 A: And probably the ammunition I mean you know

45 Q: They are they are telling me that from the detailed microscopic examination

46 A: Mhhmm

47 Q: And they tell me they can do this o.k?

48 A: O.K.

49 Q: That weapon

50 A: Yeah

51 Q: is the weapon that fired and killed

Gayle Meggyesy.

52 A: Well it's it they there's no way it can be there's absolutely no way it can unless this is the only instance that it could be o.k.

54 Q: O.K.

55 A: If when I left Wooster my wife also left Wooster someone entered my house took that gun went down to Gayle Meggyesy's killed her came back up to Wooster put it in my kitchen cabinet.

t.p.27

1 Q: O.K. That wouldn't be very likely.

2 A: That is not very likely.

3 Q: If you were in my shoes what would you do at this point?

4 A: If I was in your shoes what would what would

5 Q: As a Prosecutor.

6 A: As the Prosecutor as far as what?

7 Q: Captain Pennell has come to me and he says this is what the lab reoprt tells us and the bottom line of what he tells us that that .357 Ruger

9 A: Yeah

10 Q: that you gave the Police the other night

11 A: Yes

12 Q: is the murder weapon.

13 A: But it's it can't be it it just can't be that's I don't know how I don't know what they go through to determine that but somewhere the there's inaccuracy there there's no way that it can be.

16 Q: so you would have be double check?

17 A: Oh yeah I mean and I would wonder as to now obviously they have to have a certain way to determine this o.k.

19 Q: Right

20 A: And and I'm sure there are outlines and everything set up and all but still

21 Q: There's a whole _____ scientific

22 A: Yeah but it just cannot be it it it can't be just as sure as I'm sittin here it cannot be, it it can't be, that you know.

24 Q: Any other ideas on what I can do John?

25 A: As far as what?

26 Q: As far as proving your innocence.

27 A: Well that I know of I'm innocent until proven guilty.

28 Q: That's true

29 A: O.K.

30 Q: However, if a Crime Laboratory tells me that your weapon fired the murder bullets

32 A: Yes

33 Q: And it's your testimony that you didn't loan that weapon to anybody

34 A: I didn't I

35 Q: that it as a matter of fact you even said it wasn't in the County to your knowledge

37 A: Yeah

38 Q: That's an awful long shot from Wooster

39 A: Yeah it is

40 Q: to down south of Killbuck

41 A: Yeah it is that's why I say the feasability of it is impossible.

42 Q: O.K.

43 A: It's

44 Q: Unless you're not telling me the truth right?

45 A: Yeah well I guess that's the other alternative but you know why would I lie to you?

47 Q: If you would have shotten shot

48 A: Well yeah if I would have shot Gayle I I could see that yeah I would be lying but

50 Q: well I'm open to any any ideas that you have John o.k. any ideas

51 A: Well it sounds to me like all of a sudden now I'm in some trouble.

52 Q: Yes I think that's

53 A: I would say that that's probably a pretty good assumption how about that I a but there again you know there somewhere in in all taht there is an error there there has to be there there just you know

56 Q: How o.k. We're not talking about here we're not talking about a theorial of

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spirits o.k.

2 A: O yeah

3 Q: I'm talking about two pieces of lead that impacted with a ladies body causing her death and that's a crime.

5 A: That is a crime

6 Q: And you've told me before that whoever did that should not be allowed to

7 A: That's right that's how I feel

8 Q: O.K. Therefore we're talking about very high stakes.

9 A: I realize that

10 Q: O.K. I'm open to any ideas that you have, because at this point I've gotta say that based upon the evidence that the Sheriff's Department has done

12 A: Yeah

13 Q: has has told me and from what you've told us earlier

14 A: Yeah

15 Q: that weapon fired those rounds, that weapon is your weapon, you were on the premises.

17 A: Yeah I wa

18 Q: Alone

A: Yeah that's true it's all you know I mean what you have is factual to the best of my knowledge but there again

Q: Let me

A: What you

Q: O.K.

A: What you tell me I

Q: Is based upon that I am told.

A: O.K. what you're told well and and it's it's absured it it's absurd there ther as much for whatever reason and and I don't understand these tests or whatever _____ but there has to be an error.

Q: O.K. John

A: There just there has to be

Q: Let me tell you something at this point

A: Alright

Q: We talked about a possibility that you may you might not be telling the truth, is is better at this point for you to say Tom I don't want to say anymore than to not tell me the truth o.k. you understand that?

36 A: Yeah I understand that

37 Q: O.K.

38 A: But I'm telling you the truth.

39 Q: You did not shoot

40 A: I did not shoot Gayle Meggyesy.

41 Q: O.K. And it's not that you don't remember shooting her or it's

42 A: It's not that I don't

43 Q: You could have shot her but you

44 A: It is not that I that I have no recollection of it or anything like that, anything else that is as I'm sitting here, I did not shoot the woman the woman is a friend of mine and and it it's just absurd it

48 Q: I really think at this particular point that we don't (inaudible - truck going by)

49 A: Well if you guys think that I shot her and I mean you have this and all this then you you just can't hardly feel good about lettin me walk out of here I mean I realize that.

52 Q: The thing being is Tom had went over

I want you to read these here these are the twelve Miranda Rights.

54 A: Yes

55 Q: And they are as he had read those off that you do have the right to remain silent.

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1 A: Mhhmm

2 Q: That anything you say can and will be used in a court of law.

3 A: Mhhmm

4 Q: You have the right to talk to a lawyer to ahve one present with you while you're being questioned.

6 A: Mhhmm

7 Q: If you wish to do so

8 A: Yes

9 Q: And if you can't afford and attorney one will be appointed to represent you at the expense of the State if you wish, understand that?

11 A: Yes I understand that, I ahve a question about that which

12 Q: O.K. Go ahead

13 A: I'd like to ask o.k. now

14 Q: Can I just go through these _____

15 A: Certainly certainly

16 Q: O.K. and then you can ask a queston if you like. You understand all of those rights explained to you?

18 A: Yes

19 Q: O.K. And with these rights in mind do you wish to talk any further with us in regards to this or do you prefer to get ahold of an attorney first or what?

21 A: Well

22 Q: That's entirely up to you.

23 A: Here again this man right here is my attorney for all (intent?) and purposes aside from you know this particular situation

25 Q: You understand though John I cannot advise you on this as your lawyer.

26 A: O.K.

27 Q: O.K.?

28 A: I can't I I well o.k.

29 Q: You would have to get another lawyer.

30 A: I

31 Q: It says you have the right to the presence of an attorney that means somebody other that the Prosecutor.

33 A: Somebody other than you o.k. no um I guess hmm can I ask you

34 Q: You can ask me a question.

35 A: O.K. alright

36 Q: I just want to make sure that you know, first of all I'd like you to sign sign that acknowledging that you've been read your rights and and (Pennell) We need to have your signature right there at the bottom.

39 A: O.K. um well

40 Q: In otherwords

41 A: Can I ask you if it's alright if is it it's o.k. to sign this I mean

42 Q: Well that's

43 A: Am I

44 Q: up to you all you're signifying by that is that you were read what was on the front of the card

46 A: Yeah

47 Q: And that you answered those questions (Pennell) there's two questions asked do you understand those rights and do you wish to talk any further because we are at a point right now that you're going to be placed under arrest for the murder of Gayle Meggyesy, do you understand that?

51 A: (Sigh) Yeah I understand it, but I obviously am not all that thrilled about it

52 Q: (Tom) I wouldn't be either John I wouldn't be either John.

53 A: Is it and I'm not trying to offend anybody, is it possible and and again I refer to the incidents that I have had with the Sheriff's Department of Coshocton and Holmes County and the Wooster Police Department is is possible that this situation has been created because it is the easiest thing to do at this point?

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1 Q: In otherwords are you being pinned if somebody framed you for this crime?

2 A: Is because o.k. my parents said that

Arlie Croskey told them they must find somebody o.k. they have to find somebody they have to hold somebody responsible for this becaues the County will simply not allow it to go undone.

5 Q: Well I don't know what the Sheriff said o.k.

6 A: That's o.k. this is what my mon and dad said so

7 Q: Let let me tell you though nobody is indicted for anything without the Prosecuting Attorney.

9 A: Yeah

10 Q: serving as a buffer

11 A: Mhhhm

12 Q: for evidence o.k.?

13 A: Which is I I guess I don't

14 Q: Which that means they gotta show me a case before you will be indicted and it must pass through the Grand Jury, they must see the evidence.

16 A: Mhhmm

17 Q: And finally before anybody is punished for this

18 A: Yes

19 Q: a trial jury would have to see it o.k.?

20 A: (Alright)

21 Q: Therefore if you are being framed for this

22 A; I'm pretty well protected on down the road

23 Q: Right

24 A: Alright (?)

25 Q: And as you said before you are innocent until proven guilty.

26 A: Yes

27 Q: However, unless a laboratory technician is lying or the officers are lying to me.

29 A: Or there is an error in one of the in the tests that they have done.

30 Q: In which case

31 A: Which there has to be.

32 Q: O.K. in which case you can believe me I am going to check that o.k.? (Pennell) We have a duty to do that do you understand that?

34 A: I understand that I understan that you must do as you feel right just as I must do as I feel is right o.k. I understand that

36 Q: Let let me

37 A: And I I don't balme anybody

38 Q: O.K.

39 A: O.K.

40 Q: John let me ask you

41 A: Yes

42 Q: Could you have shot Gayle and thought it was the right thing to do?

43 A: (Sigh)

44 Q: That she was playing with evil forces and she was an evil person and that it was an o.k. thing to do to kill her?

45 A: There is I suppose it's a chance but there's about as much chance of me walking to the top floor of the Empire State Building and jumping off.

48 Q: In otherwords that's not true that's

49 A: I don't think it's realistic uh you know I I don't think no I I guess not I mean yeah I mean physically and all that

but

51 Q: O.K.

52 A: it's not fea it's not a it's not a likely feasability.

53 Q: O.K. Let's get back to the Miranda part

54 A: O.K.

55 Q: It's up to you if you want to sign it or not that's fine.

56 A: O.K.

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1 Q: (Pennell) Do you want to talk with us any further with regard to the matter I'll mark this yes or no.

3 A: Yes

4 Q: O.K.

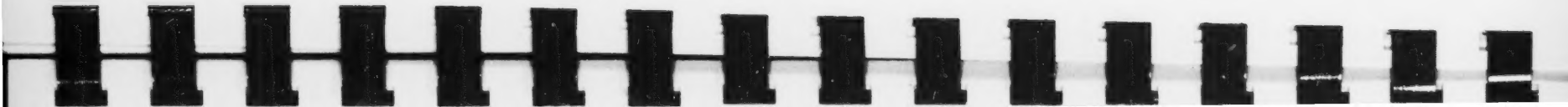
5 A: Yeah cause here again now you know

6 Q: What time is it a it's 2:45 p.m. o.k., the only thing this is is that I read you those rights there is nothing other

8 A: That's it?

9 Q: That's it.

10 A: That's it.



11 Q: (Inaudible) all contaned on that particular (card?)

12 A: O.K. by signing this do I do I waiver anything or?

13 Q: You waiving you're understanding you're saying that you understand your rights and that you're waiving those rights however at any time like I told you before I want to talk to a lawyer I don't want to answer anymore questions.

All you're doing by signing that is acknowledging that those rights on the front of that card were read to you and asked those questions on the back of the card were read were asked of you and that those yes or no answers are the answers that you gave that's all you're signifying John, it's no confession. If you feel better not signing it that's fine we'll just have Captain Pennell take it back.

22 A: Umm

23 Q: It's totally up to you however we will not talk to you anymore unless you do sign it o.k.?

25 A: O.K.

26 Q: Cause we don't want to get into problems later.

27 A: Oh I I mean I can understand your your standpoint especially your standpoint o.k.

29 Q: Well it's the job of the Prosecuting Attorney to determine the truth.

30 A: I understand that.

31 Q: You understand that once I do once the either side has shown me the truth and I have an oath and I must take action on it.

33 A: I understand that I I understand that you are bound to do what you feel right. I I I mean I that that's all understand uh I I guess

35 Q: I I'd like to John do you want to sign it or not yes or no, one way or the other, if you don't if you don't want to that's fine, if you do that's fine too.

38 A: I I guess I still am curious as to what all is involved with signing this I guess that's

40 Q: Would you like to read it you know it's a (Pennell) I I've ran over it with him once before.

42 A: O.K.

43 Q: But if you're more and welcome to read over it again.

44 A: Do you you understand what I;m trying to say I'm not

45 Q: I would be very cautious if I were you.

46 A: Yeah I mean you know this is this is not

47 Q: Sure

48 A: You you know what I'm saying

49 Q: It's not something that happens everyday.

50 A: Yeah I mean I'm a I'm a builder I'm I'm not a lawyer I don't understand

51 Q: Sure

52 A: these things so I

53 Q: (Pennell) This is the acknowledgment that we had read you those particular rights, we have a duty to read you those particular rights.

55 A: I think I'm aware of that (reading over the rights somewhat outloud) o.k. on that question if you cannot afford to hire a lawyer and that the the how o.k. at at

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my financial standpoint I cannot obviously afford an attorney.

2 Q: Well I'm not going to quibble with you over whether you want an attorney, if you would like to have an attorney and you say Tom I cannot afford one, I will call the Judge and um then it's up to you now I should a you know then you can have the lawyer here for futher questioning, you can wait talk to us later if you want.

7 A: Mhhmm

8 Q: It's totally up to you John, we we cannot use any force we haven't used any force, threats or promises on you at this point.

10 A: No

11 Q: It's just that at that point that Captain Pennell feels that you're under custody.

A: Yeah

Q: That you're under arrest he's required by law

A: I understand that I I mean I this I I guess I want to know how they will appoint me an attorney how will they do that how does he

Q: If you if you wanted to wait awhile what would happen is you would ask the Judge to give you an attorney and the Judge would inquire into your finances.

A: Yeah

Q: And uh then he would make up his mind

A: O.K.

Q: As to whether you are in fact that point however if you didn't want to go over before a Judge at this point and just wanted to get in touch with an attorney you could call him on the phone you can use my phone if you like and tell him say hey please come over I would like to have you here when I talk with these guys or you can just say hey I really don't want to say anything else, it's totally up to

you John.

28 A: I I guess what I'm trying to figure out is how do I know that this said attorney that that might be appointed to me will be competent and will be able to represent me fairly and all that I ___

31 Q: Well that's kind of up to the Judge, if you wanted to call an attorney you can call the attorney of your choice you can call F. Lee Bailey if you want John o.k. um

34 A: Ha ha ha

35 Q: You know it's totally up to you a so

36 A: O.K.

37 Q: The choice is yours o.k.?

38 A: O.K.

39 Q: The immediate question we got is do you want to sign this

40 A: Yeah I mean I I I guess I understand what

41 Q: O.K.

42 A: Umm Here again this is not gonna be a really all that accurate a signature from me cause obviously

44 Q: That's fine so long as

45 A: You guys can are obviously witnessing me signing this and all that.

46 Q: O.K.

47 A: Now as far as can I ask more questions?

48 Q: Sure

49 A: O.K. Obviously now that I have been arrested and all that what happens to these articles a my vehicle, the articles in them, a what are my rights as far as who can I contact you know what'ss be done to me and all that?

52 Q: You can contact anybody you want John, the needless to say the .357 Ruger is evidence o.k. and you will be

54 A: So I obviously can't have that back well if I'm arrested no wy can I have it back.

56 Q: Right

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1 A: But I mean it it can't be put back in Wooster

2 Q. Right

A: to my

Q: To your wife o.k. and I can I understand your concern for her o.k. it might be better for your wife to go live with somebody

A: I think that that is probably a good

Q: Um any other questions that you have John?

A: I I guess I would like to call a my wife

Q: O.K.

A: and and and I guess I would like to call my my family and and a my my father has offered to to um foot the bill for an attorney if if I need one and and I I feel as though he would and and and so

Q: O.K. What I'd like to do is unless there's anything more you want to talk about at this point.

A: Yes yeah

Q: O.K. is to they have facilities o.k. you it's gonna maybe take quite a while o.k.

A: What is?

19 Q: For you to contact folks o.k.

20 A: O.K.

21 Q: And to talk

22 A: I can't do that right now now

23 Q: What I'd like to do is maybe have you do it over at the Sheriff's Department

24 A: O.K.

25 Q: O.K. And so

26 A: That's

27 Q: if you could a

28 A: I'll be alright

29 Q: go with Captain Pennell at this point.

30 A: And what do you want me to do with this?

31 Q: That's yours you can keep that___ (come on in)

32 A: O.K. ___ my vehicle and that what will what will happen to it or

33 Q: I would contact your family and have them come pick it up. (Pennell) Is it secured right now?

35 A: No and I ahve a rifle and two boxes of ammunition in the trunk

36 Q: O.K.

37 A: that it's locked but I mean you know it's there

38 Q: (Pennell) And do you have the keys?

39 A: I think I do. The keys to the vehicle it's the Chrysler keys alright that's the trunk and that's the ignition.

41 Q: O.K. Uh it is locked?

42 A: No it is the trunk is locked I mean it's you know the hatch is locked.

43 Q: Can you lock the outside of it, the doors?

44 A: Yes

45 Q: O.K. And where is it parked?

46 A: It's parked right out front here, it's it's it's a four a five door four door with a hatch cream colored Dodge Omni 1980.

48 Q: O.K. Alright probably the best thing to do is just secure that right now and then bring him back the keys? (Tom) Right, then tell your family where _____. (Pennell) he should probably accompany me along to make sure the car is locked.

(Tom) Right, you can go with him make sure that nothing is - yeah yeah nothings taken. (Pennell) This is Captain Aurand I don't know if you met him before or not. (Aurand) I don't think so.

54 A: Uh no I don't think so either.

55 Q: O.K. A John is placed under arrest for murder of Gayle Meggyesy a he will be taken into custody, if you'd a accompany him a over to you vehicle.

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1 A: Mhhm

2 Q: I'll be right alone

3 A: O.K.

4 Q: And a make sure that the vehicle's secured.

5 A: Alright

6 Q: Uh we'll give the keys back to you as soon as it's secured

7 A: O.K. Alright

8 Q: And that'd be placed in our our box over there with the rest of your personal effects.

10 A: Alright

11 Q: So a

12 A: O.K.

13 Q: There's another thing

14 A: Yes

15 Q: I want you to understand

16 A· Yes

17 Q· A you are under ous in custody

18 A In custody yes

19 Q: Yeah so a you have a pen knife over here

20 A. Yes I do

21 Q: Why don't you just turn around there

22 A: Alright

23 Q: Pat you down

24 A: Alright

25 Q: Make sure that

26 A: Is this alright?

27 Q: Yeah that'll be fine. (Tom) No need to have your (inaudible)

28 A: O.K. ha ha ah

29 Q. O.K. you carry change in your back

30 A: Yes in the back pocket

31 Q: O.K. Just leave the change in there

32 A: Alright that's my wallet

33 Q: And this is your receipts and I'll those I'll put back in your wallet there

34 A: (Inaudible) Those are my other set of Redwing shoes and my synthetic socks

36 Q: C.K. Nothing up above nothing in your waistline no o.k. Alright Captain Aurand I'll give you this knife (it has a cross on it?) You go ahead and uh you'll have to be cuffed because you are in in our custody.

39 A: I understand, front or back or ____ front o.k. (sound of handcuffs clicking on) I never had this done before this is a first.

41 Q: How do you want me to do this overtop (Pennell) Yeah over top o.k.

42 A: _____ circumstances this would be kind of interesting, but I'm not really enjoying it right now.

44 Q: O.K. Alright you come along with us

45 A: Yeah I'm coming along with you what else am I to do?

The End

CERTIFICATION

I, Jennifer L. Miller, secretary for the Holmes County Prosecuting Attorney, do hereby certify that the foregoing transcript is a true and complete transcript of the same; that I typed the same from a tape-recording given to me on the 10th day of April, 1986, by Captain Roger E. Penrell and finished on the 30th day of April, 1986.

Jennifer L. Miller, Secretary
Prosecuting Attorney's Office
103 N. Clay St., P.O. Box 436
Millersburg, Ohio 44654

American Bar Association Standards Relating to the Administration of Criminal Justice:

Chapter 3. The Prosecution Function

Standard 31.2 Conflicts of Interest

A prosecutor should avoid the appearance or reality of a conflict of interest with respect to official duties. professional responsibility, failure to do so will constitute unprofessional conduct

Standard 31.3 Public Statements

(a) The prosecutor should not exploit the office by means of personal publicity connected with a case before the trial, or thereafter.

(b) The prosecutor should comply with the chapter on fair trial and free press in these standards. In some instances, as defined in codes of professional responsibility, failure to do so will constitute unprofessional conduct.

(c) In order to assure a fair trial for the accused, the prosecutor and police should cooperate in achieving compliance

with the chapter of Fair Trial and Free Press of these standards and codes of professional responsibility.

Standard 31.4 Duty to Improve the Law

It is an important function of the prosecutor to seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, he or she should stimulate efforts for remedial action.

DR-710/ TRIAL PUBLICITY

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaborator.

(1) Information contained in a public record.

(2) that the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record including arrests,

indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existance or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7.107(B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been

apprehended, any information necessary to aid in his apprehension or warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or text of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the

charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that the relates to the trial parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by public communication and that is

reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7 107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistant with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extra-judicial statement, other than a quotation from a reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to: . . . .

IN THE COURT OF COMMON PLEAS,
HOLMES COUNTY, OHIO

STATE OF OHIO, *

PLAINTIFF * CASE NO. 86-CR-12

VS *

JOHN FRIEDRICH * HEARING ON MOTIONS

DEFENDANT *

* * * * * * * * * * *

REMEMBERED THAT THIS CASE CAME ON FOR HEARING ON THE 23RD DAY OF SEPTEMBER, 1986, THE HON. JAMES H. ESTILL, JUDGE, PRESIDING.

APPEARANCES:

Thomas D. White, Esq.
Holmes County Prosecutor
103 North Clay Street
Millersburg, OH 44654
On Behalf of the State

Ralph C Buss
Attorney at Law
32201 Lakeshore Boulevard
Willowick, OH 44094
On Behalf of the Defendant

Karen A. McCluggage, Official Court Reporter

1:00 P.M.

THE COURT: This is State of Ohio vs John Friedrich, Case No. 86-CR-12, coming on to be heard today on the various motions of the Defendant and, I believe, there are 12 different motions. Defendant may proceed.

MR. BUSS: Thank you, your Honor.

MR. WHITE May it please the Court, not tramping on Mr. Buss, I believe we have certain stipulations that we want to make on the record prior to-

THE COURT: Yes. Might as well make those on the record to begin with.

MR. WHITE: Your Honor, since I will be the party basically offering it, with opposing counsel's permission, I will relate to the Court our discussions. We basically have 12 motions, 11 by the defense and one by the state. We have prepared a recap for the court, which we have provided for defense counsel and to the court.

The first motion is a motion to disqualify the prosecutor, which we will be proceeding as on oral argument. It is my understanding that both parties are going to stipulate the evidence as attached to our motions and our exhibits so there will be no testimony or other evidence taken in that; Mr. Buss and I will simply argue that.

Defendant's No. 2, Motion to Compel Discovery, we have agreed is moot. The State has provided discovery to the Defense.

No. 3 and No. 6, two motions to examine physical evidence. We have agreed that the Court will continue that. We would request that the Court continue that pending a meeting on October 7th at the Bureau of Criminal Identification and Investigation Offices at Richfield and also pending the Defense aquiring of a ballistic's expert with regard to the evidence the State has provided discovery on.

No. 4, Motion for Disclosure of electronic or other surveillance. I am willing to certify for the record and for the Court that there is none that the State has or in its possession.

Motion No. 5, Motion to Compel Production of Autopsy Report, we have agreed is moot. That was provided to Defense in discovery.

No. 7, we are going to proceed on after the Motion to disqualify counsel.

Motion No. 8, Motion for Oral Hearing on all Defendant's Motions are being granted on this date

Motion No. 9, Motion to Furnish Exculpatory Evidence. The State is willing to stipulate that we are under a duty pursuant to Brady vs. Maryland in Criminal Rule 16 to provide exculpatory evidence to the defense as part of discovery.

Motion No 10, Motion to disclose identity of witnesses. We have agreed that that is moot. The unnamed witnesses were provided in supplemental discovery to the defense.

Motion No. 11, Motion to Disclose Impeaching Information. I am willing to certify that any impeaching information which rises to the level of being exculpatory will be provided to the Defense and the Defense, will, of course, be provided an incamera opportunity to review witness statements at trial.

State's Motion No. 1, Motion to Compel reciprocal discovery, we are willing to stipulate that the Defendant will provide reciprocal discovery to the State within thirty (30) days from this date.

THE COURT: Alright. We will proceed now then to hear arguments on what you have listed here as Motion No. 1, Motion to Disqualify counsel.

MR. BUSS: Yes, Your Honor. With my motions I have attached a Memorandum of excerpts and the law applicable to this particular case. So, I am not going to restate those. However, I will go to the exhibit attached to the State's Memorandum and Affidavit in Opposition to our Motion and briefly state that I think it is undisputable first, on that an attorney-client relationship at one time did exist. And in this particular instance, after about the incident for which we are here, John Friedrich made the telephone conversation, which is attached as Exhibit B to the State's response, wherein he calls Mr. White and on line 16 of the first page state, "Oh, well, I wondered if I could talk to you in and preferrably not over the phone if you could have a couple minutes for me today sometime". And on Line 31 he states: Mr. White asked him, "Is it something that you want to keep pretty much confidential?" And the answer is, "Uh-huh. At this point, yes." Your Honor, I think it is natural for people to once they

are with an attorney to stay with him and regard him as their attorney. It is a pretty difficult bond to break. I think an attorney-client relationship isn't always predicated upon a fee paid but it is predicated on some type of confidentiality between the attorney and the client. In this instance, from the transcript attached, it certainly looks that Mr. Friedrich had an expectation of confidentiality and I think that should have alerted Mr. White that he had an expectation of confidentiality and that the attorney-client relationship founded on the former dealings with the Workmen's Compensation claim was continuing. And I think that at that point that he had a very strong duty to stop all proceedings and recommend that he get an attorney, that he would leave and then return with that attorney. This all based on the history of the relationship of these two people. And I think as that wasn't done the continuation of Mr. White in his present capacity would be highly prejudicial to my client, and for that reason we are making

these motions and submit the affidavits attached behind the motion we filed, and would also move that Exhibit B would also be a joint exhibit in this case also should be submitted for the record; Exhibit C also, which is behind Mr. White's motion. These all tend to show that at the very worst there was a confusion; and the confusion in a serious situation like this can only work a prejudice to Mr. Friedrich. Thank you, Your Honor.

THE COURT: Thank you sir. Mr. White

MR. WHITE: May it please the Court, first, I have no objection, for the purposes of this hearing, for the admission of both defense and state's exhibits and would join in a stipulation of that.

Your Honor, as you are aware, having been prosecuting attorney for several terms, in a small county a prosecuting attorney often does wear several hats. The office of prosecuting attorney is not a full-time job. Therefore, the prosecutor often has a private practice. And a prosecutor must, therefore, be very

cognizant and aware at all times of potential conflicts of interest, especially when he deals with criminal actions or alleged criminal actions on behalf of a client or a former client. We would submit that the prosecuting attorney in this case, as the evidence will show and as I will discuss it very briefly with the Court, has shown that the prosecuting attorney did make clear to the Defendant and that he did understand that this was not part of the attorney-client relationship. First, however, Your Honor, I would like to point out to the Court that what my learned opponent here, Mr. Buss, is really trying to do is to kill two birds with one stone. Not only is he attempting to disqualify the prosecuting attorney, but if the Court were to do so hold that an attorney-client relationship was in effect at the time of the Defendant's interview the Court would then also necessarily have to hold that the Defendant's statements to the prosecuting attorney and to Captain Pennell were privileged and not admissible against

the Defendant at his trial. So what we really have here is not only a motion to disqualify, it is also a motion to supress evidence. As the Court is well aware, there are specifically two types of analyses that the may use when dealing with what the Defendant understood and what would a reasonable person have understood. The subjective versus the objective analysis. The subjective would require the Court to crawl into the Defendant's head, see what his state of mind was at the time he was talking. The objective would require the Court to say what would a reasonable person have expected with regard to confidentiality in this situation. The state submits that the evidence shows that regardless of the analyses, subjective versus objective, the Defendant's motion to disqualify cannot be granted.

First, with regard to the subjective. What does the evidence that the defense and the state have submitted to the Court show that the Defendant understood, that he was told, with regard to this

conversation, this interview on April 3rd? First, the Court should look at an excerpt that Mr. Buss has already directed your attention to, the transcript of the telephone call which set up this interview. Refer the Court's attention to the entire portion of the transcript, but specifically to Line 36 where Mr. Friedrich is told, "I want you to understand, you know, I can't represent you and there won't be any kind of attorney-client relationship, "to which the Defendant replies, "Yes, of course, right." The Defendant understood prior to stepping within the office of the prosecuting attorney that there would be no attorney-client relationship, and he in fact agreed to that. Secondly, the Court should look at certain excerpts which we have cited in our memorandum from the interview itself. Referring the Court to Page 10 where Lines 37 thru the end of page 55 the Court can find this conversation taking place. Prosecuting attorney says, "That's our job is to try you. It's the Sheriff Department's job to

investigate it and if I think there is enough evidence it is my job to prosecute. Okay?" The Defendant answered: "Yeah." "John, I want you to understand, okay, like the other night there was no coercion." "Hmm. Coercion. I don't understand that," the Defendant replies. "No force was used to get you to give the gun, okay?" Answer: "No, no there wasn't." "Same thing applies. I made notes of what the officer told me. I would like to ask you about them. If it makes you too upset, you know, don't." "That's alright." "To just that we can clean up some things in my mind so we can get on with it." I want you to understand you are not in custody." "Certainly. I, okay." "And you are not under arrest. You can come out at any time and say, "Tom, I don't want to talk to you, you know?" "Okay." "At any time." "Alright." That is not the conversation of a client with his attorney. It is the conversation of a prosecutor, investigating officer, with a suspect advising him of his rights. Not only do you have to look, Your Honor, or can you

look at the examples I cite, you can look at the examples the defense cite. The defense cites on Page 29 of the transcript starting at Line 23 where Captain Pennell, the Defendant and myself are discussing his Miranda rights which he has just been advised of. The Defendant does say here again, "This man right here is my attorney for all intensive purposes." However, he goes on to say, "Aside from, you know, this particular situation." It is clear from the Defendant's understanding that I was not representing him with regard to the murder of Gayle Megessey. It is clear from his own mouth. Finally, the gist of this whole conversation can be pointed out by another citation that the Defendant gives on Page 25. Starting at Line 25 the Defendant says , "Yeah, I don't know what's going on and I also have another matter. You are basically my attorney, of course, although not, you can't be in this I understand." That is the Defendant's own words. The response is, "Okay.' The Defendant replies, "Because of your position as

prosecutor." The answer is "Right." The Defendant goes on to say, "Okay, I Understand that and I don't want to pose a problem for you in coming to you, okay?" Answer, Okay. Actually, well, if you're concerned about where the police took your weapons the Prosecutor would be the logical place to come." It is clear from the context of the conversation the reason the Defendant contacted the prosecuting attorney is because he was concerned about what happened to his weapons. He wanted them back. It is a logical place to come is the prosecuting attorney if you have a dispute with police. Therefore, we submit, Your Honor, that on the record from the Defendant's own mouth, from the gist of the conversation, the Defendant was warned; he indicated that he understood both before, during and toward the end of the conversation what capacity the prosecuting attorney was acting in. Therefore, on the subjective test the Defendant cannot win upon his motion to disqualify.

As to the objective test,

the reasonable man test, the law has long held that no person can reasonably expect confidentiality -- I don't care if it be attorney-client, patient-physician, penitent-priest, interspousal -- if there is a third person present. It is undisputed and on the record that in this interview and throughout the interview Captain Roger Pennell of the Holmes County Sheriff's Department was present in the same room. Therefore, Defendant, as a reasonable person, could not expect anything that he would say about the Negessey Case to be confidential from the investigating authorities. Regardless of what he thought his relationship was with the prosecuting attorney, Captain Pennell was there and therefor a reasonable man could not expect confidentiality. Your Honor, because of the two analyses, whichever one or both the Court decides to adopt, the State submits that the Defendant's Motion to Disqualify should be denied.

THE COURT: Alright. Thank you. The Court will take the Motion under

advisement based upon the arguments and the state of the record. Now, do you desire to speak to what has been listed as Motion No. 7, Motion to Disclose Grand Jury Proceedings?

MR. BUSS: As to the Grand Jury Proceedings, Your Honor, I think the prosecutor has stated that they have not been recorded, so the Motion can't be argued if that is the correct answer, which I assume that it is.

MR. WHITE: May it please the Court, for the pupose of the record, as the Court well knows it is our local practice not to keep the minutes, full transcripts, full recordings of our grand jury proceedings. Therefore, I do agree with Mr. Buss that cannot be argued at this time.

THE COURT: Well, we can settle that once and for all. If they were recorded the court reporter would have done it. And you did not record this proceeding, is that correct?

COURT REPORTER: I can't -- I was not back there.

THE COURT: That settles that.

MR. WHITE: May it please the Court, one thing the court reporter might have forgot, which the defense is aware of, she was called in with regard to the appearance of the Defendant and his wife and that solely.

COURT REPORTER: Right. Right.

THE COURT: But there was no other testimony taken?

MR. WHITE: There was no testimony taken, Your Honor.

THE COURT: Anything further at this time?

MR. WHITE: Nothing further, Your Honor.

THE COURT: Anything furter, Mr. Buss?

MR. BUSS: No, sir.

MR. WHITE: Oh, Your Honor, excuse me, we do have two additional motions Mr. Buss has filed today: One requiring legal response on the part of the State, and I will be filing that; the other requests additional

information. We have a meeting, as I indicated earlier, October 7th with BCI. I think that we can work that out. If not, we will come back to the Court with that motion.

THE COURT: Alright. That is all.

MR. WHITE: Thank you, Your Honor.

1:18 P.M.

* * * * * * * * * * * * * * *

C E R T I F I C A T E

STATE OF OHIO)
ss
HOLMES COUNTY)

I, Karen A. McCluggage, Official Court Reporter for the Courts of Holmes County, do hereby certify that I was present during the foregoing hearing and took the same down in shorthand notes; that the same was thereafter transcribed into typewriting by me; and that the same is a true and complete transcript of the same.

_____
Karen A. McCluggage

Supreme Court, U.S.
FILED
JAN 29 1988
JOSEPH F. SPANIOL, JR.
CLERK

No.: 87-891

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

JOHN FRIEDRICH

Petitioner

VS.

THE STATE OF OHIO

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR HOLMES COUNTY, OHIO

BRIEF IN OPPOSITION

COUNSEL FOR RESPONDENT:

Thomas D. White, Prosecuting Attorney
Richard R. Benson, Jr., Ass't. Prosecuting Attorney
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Millersburg, Ohio 44654
(216) 674-4841

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16 Wright, Miller, Cooper & Gressman, *Federal Practice and Procedure: Jurisdiction*

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STATEMENT OF THE CASE

Holmes County is a rural, agricultural county in east central Ohio. Its population numbers 30,000, approximately forty percent of whom are members of the Amish sect. The local bar numbers eighteen practitioners, including a part-time prosecuting attorney and two part-time assistant prosecuting attorneys.

On April 8, 1986, the Holmes County, Ohio, Grand Jury returned a true bill of indictment against Defendant/Petitioner (hereinafter, Defendant) John Friedrich, charging him with the aggravated murder of G. Gayle Meggyesy on March 29, 1986.

On August 7, 1986, counsel for Defendant filed a motion to disqualify the Prosecuting Attorney, the motion being predicated upon the claimed attorney-client relationship between the Defendant and Prosecuting Attorney White. The alleged relationship stemmed from a limited consultation eighteen months earlier between the Defendant and Mr. White, who maintained a private practice in order to supplement his income from his part-time Prosecutor's responsibilities. The consultation, which lasted for several minutes, concerned a Worker's Compensation claim Defendant wished to pursue. Mr. White did not accept the matter for Defendant.

On November 6, 1986, the trial court overruled the motion for disqualification of counsel, finding the claimed attorney-client relationship too attenuated to stand up to scrutiny.

On November 7, 1986, counsel for Defendant filed a Notice of Appeal to the Court of Appeals for Holmes County, Ohio, Fifth Appellate District, on the issue of the trial court's overruling of the disqualification motion.

On November 13, 1986, the trial court journalized an entry continuing the trial until such time as the Court of Appeals ruled on the appeal.

On April 17, 1987, the Court of Appeals filed its opinion dismissing Defendant's appeal ". . . for want of jurisdiction as there is no final appealable order".

On May 1, 1987, counsel for Defendant filed a Notice of Appeal to the Supreme Court of Ohio on the issue of the dismissal by the Court of Appeals.

On May 8, 1987, the trial judge notified counsel of record by letter of his opinion that the process of appeal would toll speedy trial time. His opinion was not challenged by either the State of Ohio or the defense.

On August 5, 1987, the Supreme Court of Ohio summarily overruled Defendant's motion for leave to appeal the dismissal by the Court of Appeals.

On September 1, 1987, counsel for Defendant filed a Notice of Appeal to the United States Supreme Court on the issue of the dismissal by the Court of Appeals.

As of the date of filing of this brief, Defendant is yet to be tried for the murder of G. Gayle Meggyesy.

ARGUMENT

I. INTRODUCTION

Defendant/Petitioner (hereinafter, Defendant) brings his Petition for a Writ of Certiorari pursuant to 28 U.S.C. §1257, which provides, in part:

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

By definition, a petition must have (1) a final judgment (2) from the highest court of a state (3) which presents a federal question. While it is undisputed that Defendant now seeks Supreme Court review after summary disposition by the highest court of the State of Ohio, he neither has a final judgment nor does he present a federal question. In fact, his petition seeks review of an issue which has previously been resolved by the Supreme Court of Ohio. Hence, his petition should be dismissed.

II. DEFENDANT/PETITIONER HAS NO FINAL JUDGMENT

According to Wright, Miller, Cooper & Gressman, *Federal Practice and Procedure: Jurisdiction* §4009, a final judgment is one that:

> terminates the litigation between the parties on the merits of the case, so that, if there should be an affirmance here, the court below would have nothing to do but to execute the judgment it had already rendered. * * * Nothing remains to be done but to require the inferior court to perform the ministerial act of entering the judgments in that court which have been ordered. * * * Nothing is left to the judicial discretion of the court below.[1]

In determining whether a judgment meets this criteria the Supreme Court may review the record below to assess the finality of proceedings. It may also look to state law for guidance on the issue of finality. See Wright, Miller, Cooper & Gressman, supra.

Defendant in the instant case makes no secret of the fact that this appeal is of a pre-trial motion to disqualify the Prosecuting Attorney. In fact, the underlying prosecution has not yet been docketed for trial, owing to the trial court's deference to defense counsel's propensity for further appeal. Hence, there can be no argument that the record below does not reflect a final judgment, and that numerous issues remain to be resolved, not the least of which is that of Defendant's guilt or innocence.

As to state law, the Supreme Court of Ohio has spoken to the very issue Defendant now attempts to raise. In *Bernbaum v. Silverstein*[2] the Court addressed the issue of whether an order overruling a motion to disqualify counsel is a final order, subject to appeal. In a unanimous decision the Court held that such an order was not a final order within the meaning of OHIO REV.

CODE ANN. §2505.02 (Page), and thus not appealable. The Court reasoned that such an order did not implicate a claim of right which would be irreparably lost if review was deferred until after final judgment. Interestingly, the author of the opinion, Justice Sweeney, noted in dictum that appeals of motions to disqualify counsel often are used as devices to delay final determination on the merits, an observation which is particularly relevant to the instant case.

An analagous situation may be found in this Court's opinion in *Flanagan v. United States*[3], in which this Court held that a district court's pre-trial disqualification of defense counsel in a criminal prosecution was not an order subject to immediate appeal. The opinion stressed the policy reasons underlying the final judgment rule, which encourage efficient administration of justice while discouraging piecemeal review. Such policy, this Court concluded, is at its strongest in the field of criminal law.

Viewed in light of the traditional finality definition, it is clear that Defendant's petition does not present this Court with a judgment which terminated the litigation below. Far from it. It merely seeks to raise a pre-trial issue which could more efficiently be raised in the context of an appeal following judgment on the merits, if, in fact, such appeal becomes necessary.

III. DEFENDANT/PETITIONER RAISES NO FEDERAL QUESTION

The jurisdiction of the Supreme Court in reviewing the proceedings of a state court is not that of a general reviewing court, but is limited to the specific instances of denials of federal rights, whether those pertaining to the constitutionality of federal or state statutes, or to certain rights, immunities, and privileges of federal origin specially set up in the state court, and denied by the rulings and judgment of that Court.[4] In short, review is limited to cases which present a federal question, whether in the context of the alleged invalidity of a United States statute or treaty; or in the context of the alleged invalidity of a state statute as being repugnant to federal law; or in the context of a claimed title, right, privilege or immunity which exists under federal law. See 28 U.S.C. §1257(3). As summarized in Wright, Miller, Cooper & Gressman, *Federal Practice and Procedure: Jurisdiction* §4017:

> Jurisdiction is available whenever there is a not insubstantial claim that any variety of federal law applies to require a result different than that reached by the state courts.

A close examination of Defendant's Petition for Writ of Certiorari reveals the following:

(1) No mention of a federal question is raised under the section titled "Questions Presented for Review".

(2) No mention of a federal question is raised under the section titled "Statement of the Case".

(3) No mention of a federal question is raised under the section titled "Reasons to Grant the Writ of Certiorari".

(4) The appendices to the petition are devoid of any argument or authority on the existence of a federal question.

(5) One vague reference is made to a federal question under the section titled "Conclusion", but the reference was neither argued in the text of the petition nor supported by even one citation of authority.

Simply put, Defendant seeks to invoke the jurisdiction of this Court to engage in a general review of one pretrial issue which he has neither characterized nor briefed as a federal question. In fact, he did not treat the issue below as a federal question. He cannot now expect to use one vague reference to certain Constitutional rights in order to bring his petition into conformity with this Court's threshhold requirements for review. Accordingly, he fails to raise a federal question.

IV. THE STATE COURT'S DECISION IS SUPPORTED BY AN INDEPENDENT AND ADEQUATE GROUND OF STATE LAW

As a rule, the Supreme Court will not review a federal question if the state court's judgment is supported by an independent and adequate ground of state law. Review may be precluded if state substantive law is sufficient to support the judgment, no matter how the federal question is resolved, or if the state courts have found adequate procedural reasons for refusing to decide the federal question. Wright, Miller, Cooper & Gressman, *Federal Practice and Procedure: Jurisdiction* §4019.

The decision of the Court of Appeals for Holmes County, Ohio, Fifth Appellate District (Appendix A-4 of Defendant's petition) addresses both the substantive and procedural issues. That Court analyzed Defendant's argument in light of applicable state statutes and case law. The controlling decision of the Supreme Court of Ohio in *Bernbaum v. Silverstein*[5] turned, in part, on that Court's analysis of Ohio Revised Code Section 2505.02, Final Order, which provides:

> An order that affects a substantial right in an action which in effect determines the action and prevents a judgment, an order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment, or an order that vacates or sets aside a judgment or grants a new trial is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial.
>
> When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

The Supreme Court of Ohio, in *Bernbaum*, supra, found that an order overruling a motion to disqualify counsel was not a final appealable order within the meaning of the statute. The Court reasoned that error, if it existed, could be reviewed more efficiently after final judgment. The Court also found instructive the conclusion of the author in *Comments, The Appealability of Orders Denying Motions for Disqualification of Counsel in the Federal Court,*[6] that allegations of disclosures because of a prior attorney-client relationship are no more curable by immediate appeal than by appeal after final judgment because of the likelihood that the challenged attorney will have had ample opportunity to disclose all that he knows prior to any disqualification.

Accordingly, there is no prejudice to Defendant by requiring him to raise after final judgment any claimed error regarding disqualification of counsel.

V. THE FEDERAL COUNTERPART TO THE STATE LAW DECISION WOULD DICTATE THE SAME RESULT

The Court of Appeals of Holmes County, Ohio, Fifth Appellate District, dismissed Defendant's appeal for want of jurisdiction as there was no final appealable order. This decision was grounded upon Ohio statutory and case law.

The same holding, however, would likely result if the analysis were based upon federal statutory and case law. As the State of Ohio has already argued, this Court's holding in *Flanagan v. United States*[7] emphasized the importance of the final judgment rule, even as to the issue of the pre-trial disqualification of counsel in a criminal prosecution. By the same token, this Court's holding in *Richardson-Merrell, Inc. v. Koller*[8] stands for the proposition that an order disqualifying counsel in a civil case is also not a final judgment subject to immediate appeal. In the latter case this Court held that the propriety of a disqualification order in a civil case can be reviewed as effectively on appeal of a final judgment as on interlocutory appeal, thus serving the final judgment policy. Furthermore, where prejudice is a prerequisite to reversal, the disqualification order is not sufficiently separate from the merits of the case to qualify for interlocutory appeal (citing *Flanagan,* supra).

The instant case involves an order overruling a motion to disqualify counsel in a criminal proceeding. By employing the foregoing analysis it can be reasoned that whatever prejudice Defendant may claim as a result of his failed attempt at disqualifying the Prosecuting Attorney can and should be raised in an appeal following final judgment. To do otherwise is to invite the sort of delay and ineffectiveness which is the unfortunate hallmark of the instant case.

VI. CONCLUSION

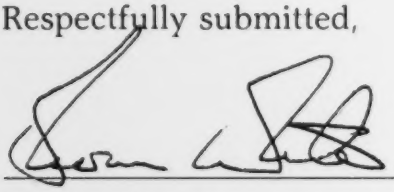
Defendant's petition is based upon the trial court's order overruling his pre-trial motion to disqualify the Prosecuting Attorney in this criminal prosecution. The motion from which he appeals was one of several pre-trial motions (Appendix A-11 of Defendant's petition), some of which have yet to be decided. To adopt Defendant's position would be to invite further appeal on other pre-trial matters, a result which is not favored under either federal or state law.

The statute invoked by Defendant in seeking this review provides the fabric for disposition of his petition. He has no final judgment upon which to base his appeal. Neither has he presented this or any other reviewing court with a federal question. However, assuming, arguendo, that this Court were to find both elements, the State of Ohio has provided adequate state law grounds upon which to rest the decision of the state court. Nor would the result be different if decided according to federal standards for review.

Defendant's action in pursuing his Petition for a Writ of Certiorari should be seen for what it really is: a device to delay final determination on the merits.

For the foregoing reasons, the State of Ohio urges this Court to overrule and dismiss Defendant's petition.

Respectfully submitted,



Thomas D. White
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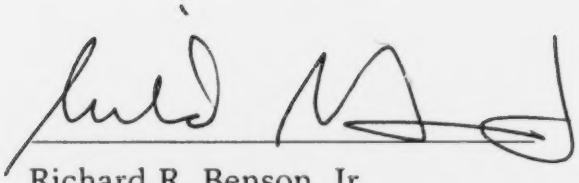
and



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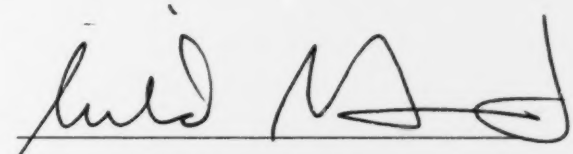
FOOTNOTES

1. Citing *Mower v. Fletcher,* 114 U.S. 127, 128, 5 S.Ct. 799, 29 L. Ed. 117
2. 62 Ohio St 2d 445, 406 N.E. 2d 532 (1980)
3. 465 U.S. 259, 104 S.Ct. 1051, 79 L.Ed. 2d 288 (1984)
4. *Waters-Pierce Oil Co. v. Texas,* 212 U.S. 86, 29 S.Ct. 220, 53 L.Ed. 417 (1909)
5. See Footnote 2
6. 45 Univ. of Chicago L. Rev. 450
7. See Footnote 3
8. 472 U.S. 424, 105 S.Ct. 2757, 86 L.Ed. 2d 340 (1985)

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing Brief in Opposition were served personally upon Ralph C. Buss, Attorney for Defendant/Petitioner, by handing them to him at the Holmes County Courthouse, Millersburg, Ohio 44654, on this 29th day of January, 1988.



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